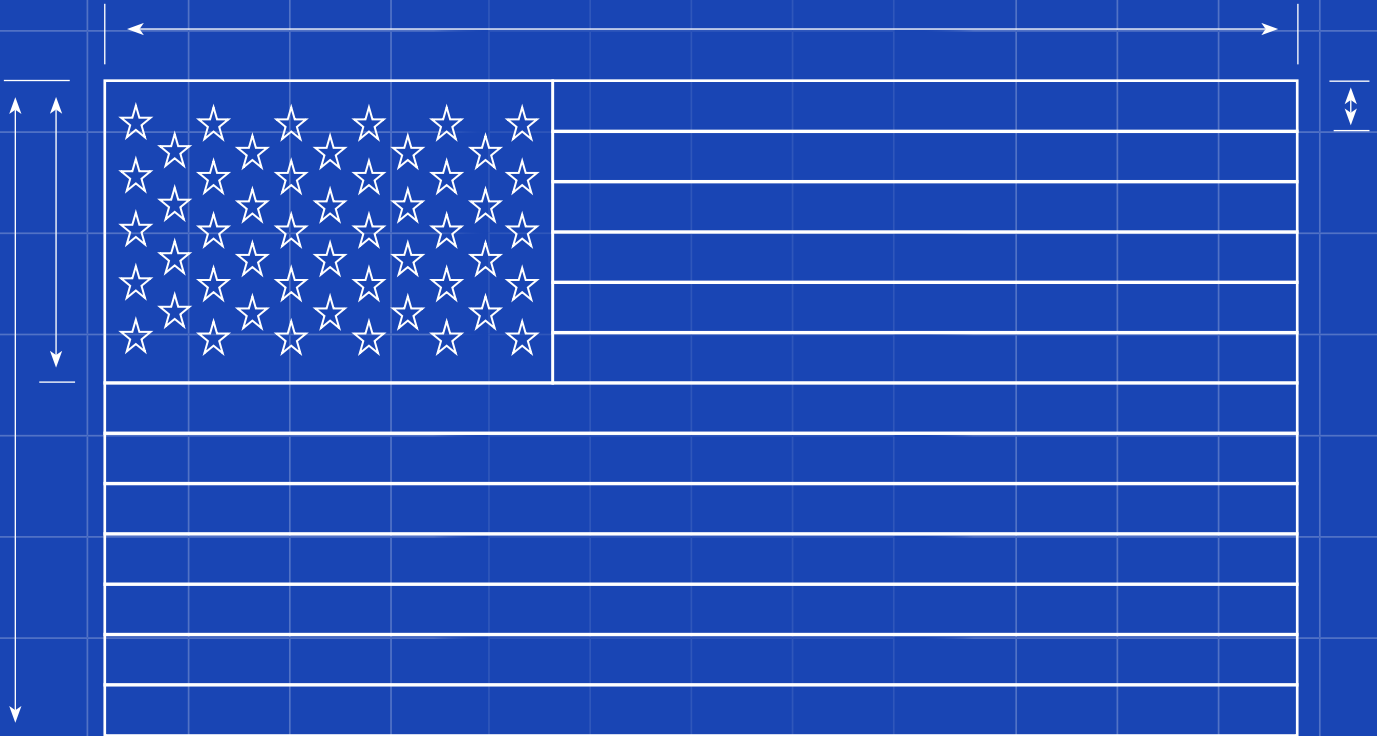


# CREW



# Countering authoritarianism:

A blueprint for a more  
resilient democracy

SEPTEMBER 2024

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# Introduction

**Democracy is the most compelling vision we have for self government. It can, and should, be a force for good in people’s lives, with history showing that democracies are more peaceful, more prosperous and more likely to protect the most vulnerable in their midst. Despite these benefits, global democracy has been in decline for almost 20 years, with authoritarian leaders—or leaders with authoritarian tendencies—coming to power in every corner of the globe.**

The United States is not immune from this global phenomenon. Although Donald Trump’s refusal to concede after an election that he knew he lost and his incitement of a violent insurrection to disrupt the transfer of presidential power epitomized this decline and crystallized our country’s existential democratic crisis, American democratic decline did not begin in 2020. The preconditions that allowed the attack on the U.S. Capitol to happen have been simmering for years.

**This report, *Countering authoritarianism: A blueprint for a more resilient democracy*, presents a comprehensive vision of the prophylactic measures we need to take today to ensure we do not slip into authoritarianism. Each chapter outlines legislation, executive actions, reforms for the judiciary and more that would tackle corruption, protect peaceful transitions of power, prevent foreign influence on our government and much more, in order to protect against the further erosion of democratic norms and build an open, accessible, stable democracy.**

In presenting these recommendations, we draw on expert findings that the conditions for democratic deterioration are rooted in profound [public distrust](#) in government, exacerbated by protracted political crises including the 2008-2009 financial crisis, long-term wars in Iraq and Afghanistan, the COVID-19 pandemic, the proliferation of misinformation and disinformation on social media platforms and numerous unjustified police killings. The increasing prominence

of money in politics worsens the crisis—as does the increasing prominence of state and federal leaders being charged, both criminally and in the public square, with political corruption on a regular basis.

Bad actors have seized on this distrust. Candidates across the country have [refused to commit to accepting legitimate electoral defeat](#), claiming—without evidence—that electoral results are inherently suspect and cannot be trusted. Unfortunately, in many states and in the halls of Congress, these conspiracy theories and election denialism have been invoked by [officials](#) tasked with overseeing and certifying local, state and federal elections. Others have [baselessly argued](#) that criminal prosecutions of elected officials are politically motivated, even when there is overwhelming evidence to the contrary. Meanwhile, extremist groups armed with weapons and distrustful of government have edged towards the political mainstream. These groups—many of whom organized the January 6th insurrection and include in their ranks former military members—have emerged as [“the most persistent and lethal threat\[\]”](#) to America. With their rise political violence has become more common, exemplified by plots to [kidnap](#) Michigan Governor Gretchen Whitmer and [assassinate](#) former President Trump.

At the same time that public trust in government has declined, American states have taken [strikingly divergent paths](#) in their commitment to democratic processes, exacerbating [growing political polarization](#) in our country. Many states have made it harder for voters—and particularly voters of color—to register to vote and access the voting booth through tactics such as eliminating polling locations, exorbitant polling place wait times and implementing restrictive voter identification laws. This attack on democratic processes is occurring at the same time that faith in the courts—the branch charged with adjudicating the constitutionality of these measures—is close to an [all-time low](#) thanks both to repeated ethical scandals and the overt politicization of judicial nominations. This confluence of factors led several reputable indices, including [The Economist’s Democracy Index](#), to conclude that American democracy is in decline. Beginning in 2016 the Democracy Index started excluding the United States from its rankings of the world’s “full democracies” (such as Canada, the United Kingdom and Germany), but instead including it on its list of “flawed democracies,” putting it in the company of countries like Greece, Israel, Poland and Brazil.<sup>1</sup>

**But hope is not lost. Since 2020 there have been promising signs for American democracy. Not only did the [2022 elections](#) occur without incident and resulted in many election deniers losing their races, but [federal, state and local](#) law enforcement have worked tirelessly to investigate and, where appropriate, charge those who participated in efforts to undermine the 2020 election and storm the Capitol on January 6th. These prosecutions are crucial, but alone they are woefully insufficient. We need transformative legislation.**

In 2020 and 2022 Congress [squandered](#) the opportunity to pass comprehensive democracy reform legislation like the Protecting Our Democracy Act and Freedom to Vote Act—legislation which is needed to start reversing America’s democratic decline. Four years later—without significant meaningful action from Congress—the threat has grown. We still desperately need comprehensive democracy reform. But we also need to take immediate steps to prevent the rise of authoritarianism here at home.

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<sup>1</sup> Other indices, including [Freedom House’s measure of Freedom in the World](#) and the [“V-Dem” index from the Varieties of Democracy Institute at the University of Gothenburg](#) reached similar conclusions, finding that American democracy is in decline.

The reforms we propose in this report are crucial first steps to protecting our democracy. We have grouped them into eight chapters, with each chapter addressing a different crisis in our democracy:

- We begin in chapter one with **The search for January 6th accountability**. The January 6th insurrection was the culmination of an attempted coup d'état, broadcast for the entire world to see. Accountability—including both civil remedies and criminal prosecution—for those who participated, led and incited the attack on the U.S. Capitol and attempted to overturn the results of the 2020 presidential election is not only necessary, but is an essential first step before our country can begin to confront the authoritarian threat, which is why it begins this report.
- In the second chapter, we discuss **Building a pro-democracy government**. Rather than playing defense and reforming all of the weaknesses exposed over the past several years, this chapter suggests proactive measures we can take to cement democracy including ways to strengthen the civil service, protect NGOs and allow pro-democracy leaders and movements to innovate and learn from one another.
- In the third chapter, we move on to **Presidential accountability and ending the imperial presidency**. Although originally [designed](#) by our founders to be weaker than the legislative branch of government, the presidency has grown more powerful and less accountable than ever. Structural reforms are urgently needed to ensure that a nefarious leader cannot avoid accountability for criminal misdeeds and sideline the checks and balances built into our system.
- The fourth chapter, **Preventing the manipulation of courts**, explores how courts can be manipulated to serve anti-democratic purposes and outlines reforms to prevent that from happening including preventing judge and forum manipulation, injecting more transparency into the judicial process including through the elimination of the shadow docket and protecting the safety and security of judicial personnel. This chapter draws on the experiences of other countries, including Hungary, Poland, Venezuela, Turkey and others, where the courts have become agents of authoritarianism rather than bulwarks against it.
- The fifth chapter, **Blocking the abuse of law enforcement and emergency powers**, suggests reforms to ensure that law enforcement is not a source of extremism. On January 6th, we saw just how lethal the threat is to our democracy when members of our law enforcement are also members of extremist groups calling for political violence. This chapter outlines ways to root out extremism within law enforcement, reform emergency powers like the Insurrection Act and National Emergencies Act and create accountability systems so police cannot hide behind the mask of qualified immunity when they misuse their position of power.
- In the sixth and seventh chapters, we focus on money in politics—looking first at **Preventing political corruption** and then at **Countering foreign authoritarian influence**. The Supreme Court's disastrous decision in *Citizens United v. FEC* opened up our system to untraceable, unlimited and anonymous money. We pay the costs of this decision every day. The reforms in these chapters are tailored to address the rise in political corruption and the increasing efforts by foreign governments to hide behind *Citizens United* as they attempt to influence—and in some cases manipulate—our democracy.

- In the final chapter, chapter eight, **Ensuring the right to vote and the peaceful transition of power**, we end our report by focusing on the crux of democracy: the right to vote. In this chapter we prioritize the need for transformative voting rights legislation to ensure that all qualified voters can access the ballot box without fear or intimidation. Recognizing that the right to vote isn't worth anything if votes aren't fairly counted and certified, the chapter proposes reforms to ensure that elections officials can perform their jobs and that our democratic institutions champion a peaceful transition of power.

Democracy requires constant care. The reforms we propose are simultaneously ambitious while only scratching the surface of the work we need to do to repair our democracy and resist the rise in authoritarianism. Crucially, they require the involvement of every organ and level of government—state legislatures, elections administrators, prosecutors, judges, governors, the executive branch and Congress. Even one of these bodies' inaction could signal doom for our democracy. Politicians, pundits and the public ignored many of the structural deficiencies facing our democracy before Donald Trump was elected president, and even after he incited a violent insurrection against our nation's seat of power.

**For the last four years, Congress has abdicated its responsibility even after an attack directly targeting them on January 6th. Our democracy may not survive if they—or anyone else—looks away again.**

# The search for January 6th accountability



**The January 6, 2021 attack on the U.S. Capitol was not a spontaneous event. It was the culmination of a multi-part scheme by a sitting president and his allies to use conspiracy theories, fraud, intimidation, coercion and ultimately violence to stay in power despite knowingly losing a free and fair election. The insurrection against our Constitution left our democracy reeling, and led to seven deaths, assaults on more than 174 police officers, countless congressional staff and law enforcement officers being traumatized and over \$2.7 billion in estimated costs.**

Many Americans continue to believe the lies that led to that deadly assault on our democracy [today](#). If experience is any indication, the worst may be yet to come. As the House Select Committee to Investigate the January 6th Attack on the U.S. Capitol [reminded](#) us, a previously failed attempt to overthrow a democratically elected government can serve as a precedent for a future attempt, especially if the insurrectionists are allowed to reflect on their weaknesses to help ensure their success the next time. The only way to interrupt that cycle and protect democracy is through accountability.

Accountability has the dual [ability](#) to punish past conduct as well as deter future bad actors from charting the same violent course. Accountability for January 6th must take several different forms including congressional investigations to identify democratic weaknesses and prevent systemic problems from repeating like we saw with the [House Select Committee](#), criminal prosecutions where warranted and professional consequences including [disbarment](#) and the [revocation](#) of security clearances as appropriate. We have already seen criminal prosecutions commence, with indictments in [Georgia](#), [Michigan](#), [Nevada](#) and [Arizona](#) against the “[fake electors](#)” who signed false electoral certificates claiming that Donald Trump won the 2020 presidential election, as well as the [1,265 prosecutions](#) (and counting) of January 6th participants.

Accountability must also include civil remedies, including enforcing the [14th Amendment’s Disqualification Clause](#) which precludes those who have previously sworn an oath to support the Constitution and then engaged in an insurrection from holding office. Following the Supreme Court’s decision in [Trump v. Anderson](#), congressional action is particularly important because without it there is no way to enforce Section 3 of the 14th Amendment against federal office holders, including presidents. Despite the Supreme Court’s finding that states could not enforce Section 3 against federal officials without congressional legislation, every court that considered whether the January 6th attack on the Capitol was an insurrection found that it was, and every decision maker that considered whether Donald Trump engaged in insurrection by inciting the attack found that he did. Those findings remain undisturbed by the Supreme Court and remain a mandate for legislative reform to prevent another insurrection from ever happening again.

Accountability also requires dismantling the outside extremist groups who, according to the U.S. intelligence community, “[present\[\] the most persistent and lethal threats](#)” to the American people. Currently over 1,265 [defendants](#) have been charged in nearly all 50 states and the District of Columbia for their roles in January 6th and [many of these defendants](#) boast affiliations with violent extremist groups like the Proud Boys, Oath Keepers and Three Percenters. They have been brazen in their violence and have even received the tacit blessing from the very government leaders who are entrusted with protecting the public’s safety, including the former president who instructed them to “[stand back and stand by](#).” Moreover, should he be reelected, Trump has [promised](#) to pardon January 6th defendants—pardons that could clear them of criminal liability but would thankfully have no effect on the 14th Amendment’s disqualification provisions. Policy makers must confront this threat of violent extremism—and violent extremists trying to run our country—head on before history repeats itself.

- **Enforce Section 3 of the Fourteenth Amendment against state and local officials.** Section 3 of the Fourteenth Amendment prohibits anyone who swore an oath to the U.S. Constitution and then engaged in insurrection from holding office. Voters in New Mexico successfully used a [quo warranto](#) claim to enforce Section 3 against a local official, former Otero County Commissioner Couy Griffin, and remove him from office for his participation in the January 6th insurrection. States with similar enforcement mechanisms should follow New Mexico’s lead and enforce Section 3 against current candidates and officeholders where there are already legal mechanisms in place to do so. And in states where these laws do not already exist, state legislatures should enact enforcement mechanisms to ensure that individuals who engaged in insurrection cannot hold state or local office.
- **Enforce Section 3 against federal officeholders and candidates.** In [Trump v. Anderson](#) the Supreme Court held that Congress must create a statutory mechanism before Section 3 can be enforced against federal officeholders and candidates. Accordingly, Congress should take



the Supreme Court at its word and pass legislation creating a mechanism to enforce Section 3 against federal officeholders and candidates, including senators, members of Congress, and the president and vice president.

- **The military should enforce Section 3 against its members who engage in insurrection.** By its plain terms, Section 3 prohibits anyone who engaged in insurrection from “hold[ing] any office, civil or military” if they have previously sworn an oath to the Constitution. [Case law from Reconstruction era disqualifications](#) makes clear that Section 3 applies to those who take a military oath of office. As we’ve seen in other countries, including recently in democracies like [Germany](#), extremist members of the military can try to overturn democracy through force. The military should enforce Section 3 against its officers and, after appropriate process under the Uniform Code of Military Justice, purge from its ranks any and all who betrayed their oaths to the Constitution by engaging in insurrection against it.
- **States should pass legislation prohibiting insurrectionists from serving in office and being employed by the state.** Although Section 3 is a crucial tool for protecting our democracy, it is not without its limits. One key constraint is that the clause only applies to individuals who previously swore an oath to the Constitution, so not all people who engage in insurrection are disqualified from office. For instance, in January and May 2023, four members of the right-wing militia group the [Proud Boys](#) and eight members of the right-wing militia group the [Oath Keepers](#) were found guilty of seditious conspiracy and other charges related to the January 6, 2021 attack on the U.S. Capitol. Since they had never sworn an oath to the Constitution, they are not barred from holding office under Section 3, despite their convictions. States should step in and fill this gap by passing legislation that makes clear that anyone who engages in insurrection or rebellion is permanently ineligible to serve in state government regardless of whether they had ever sworn an oath to the Constitution. Additionally, states should pass laws making anyone convicted of rebellion, insurrection, seditious conspiracy or a felony in relation to any such act, permanently ineligible to be employed by a state or any of its political subdivisions, including as a member of law enforcement.
- **Congress should pass legislation prohibiting insurrectionists from serving in office and being employed by the government.** The Supreme Court has made clear that the Constitution, which includes the Disqualification Clause, sets the exclusive qualifications for the presidency and Congress. Under this reasoning Congress is prohibited from adding qualifications for these positions, but it is completely free to add qualifications for federal positions outside of Congress and the presidency. Congress should pass legislation making anyone who engages in insurrection or rebellion permanently ineligible to serve in the federal government, regardless of whether they have ever sworn an oath to the Constitution. This prohibition can and should apply to civil servants, ambassadors, judges, cabinet appointees and others.
- **States must enforce their anti-militia laws to combat domestic violent extremism.** Private militia and anti-government [groups](#) have increasingly aligned themselves with violent and militant figures on the far-right. In recent years they have become more prominent and their ideologies more widely accepted, with [one in four](#) Americans thinking that violence against the government can be justified. Fueled by violent conspiracy theories about perceived tyranny of the government, these groups could be utilized for nefarious purposes by a future president with authoritarian leanings—similar to how they organized

to support Trump's efforts to overturn the 2020 election. Thankfully, private militias are already [unlawful](#) in all 50 states. States should rigorously enforce those laws and should adopt [model comprehensive legislation](#) that prohibits private militia groups that threaten democratic processes including by creating civil enforcement mechanisms for state officials and victims of vigilante actions to seek damages and injunctive relief.

## RESOURCES:

- [Trump v. Anderson, 601 U.S. 100 \(2024\)](#).
- [The case for Donald Trump's disqualification under the 14th Amendment, CREW \(2023\)](#).
- [Routine Disqualification: Every state has kept ineligible candidates off the ballot, and Trump could be next, CREW \(2023\)](#).
- [Quo Warranto Processes: States and Territories Survey, POGO \(2023\)](#).
- [New York and Connecticut should pass bills to keep insurrectionists out of office, CREW \(2023\)](#).
- [State Fact Sheets, Georgetown Law \(last visited July 2, 2024\)](#).
- [Mary B. McCord, Dispelling the Myth of the Second Amendment, Brennan Center for Justice \(2021\)](#).

## Examples of legislation to implement these proposals:

- [H.R. 7906](#), To Establish a Civil Act for Disqualification Under Section 3 of the 14th Amendment of the U.S. Constitution (117th Congress)
- [Connecticut Proposed Bill No. 244](#), An Act Concerning the Right to be and Privileges of an Elector (January 2023 Session)
- [New York Senate Bill S888](#), Restrict Insurrectionists from Office Taking (RIOT) Act (2023-2024 Legislative Session)
- [Model State Anti-Parliamentary Activity Legislation](#), Institute for Constitutional Advocacy and Protection (ICAP)

# Building a pro-democracy government



## Democratic survival requires the creation of a pro-democracy movement that is inspirational, practical and innovative.

Authoritarians have been disturbingly innovative. From Venezuela to Hungary to Russia, they have reached across geopolitical boundaries to create an “[authoritarian playbook](#),” where would-be dictators have cemented their power by learning from one another and using shockingly similar tactics: spreading disinformation, exploiting racial, religious and ethnic hatred, weaponizing fear and stoking political violence. Rather than coming to power through military coups d’etat, these authoritarians have incrementally and methodically chipped away at democracy’s institutional, legal and political constraints designed to prevent their rise in the first place. One only needs to [compare](#) the January 6, 2021 attack on the U.S. Capitol incited by former President Trump to the January 8, 2023 attack on parliament in Brazil incited by former President Jair Bolsonaro to see that authoritarians are learning from each other and innovating to ensure their success.

In April 2023, the Heritage Foundation released a detailed report outlining how this death by a thousand cuts might happen here in the United States. A centerpiece of their report, called [Project 2025](#), includes a massive restructuring of the civil service, replacing tens of thousands of nonpartisan experts with loyalists and sycophants. These loyalists would be [committed to carrying out audacious plans](#) designed to implement an authoritarian agenda where a future president is constrained neither by the law nor by separation of powers.

The only way to counter this authoritarian playbook is to innovate and create the democracy playbook. The policy recommendations in this report are crucial first steps. But more needs to

be done. Creating a democracy playbook requires getting out of our silos and working across state and national boundaries. There is already a tremendous amount of innovation happening in different corners of the United States and globally, particularly in local governments and in nongovernmental organizations where leaders have experimented with ways to build more equitable, deliberative and collaborative relationships between voters and elected officials including through ranked choice voting, citizen assemblies and youth voting initiatives. But unfortunately democracy leaders in Boston and Boulder aren't learning from democracy leaders in Budapest and Brasilia. To craft a playbook for democracy in the 21st century, it's important that local governments, nongovernmental organizations and civil society expand their ability to innovate while governments leverage their convening power to facilitate learning among these leaders.

- **Protect the federal civil service.** At the end of Trump's term, his administration tried to upend the modern civil service by creating a new government hiring classification, [Schedule F](#), which would have allowed his administration to replace tens of thousands of experts with loyalists, regardless of their expertise or lack thereof. Although President Biden [rescinded](#) Trump's executive order, Schedule F has now been embraced by the Heritage Foundation's Project 2025 as conservative orthodoxy. The goal of Schedule F is to implement radical policies by leaning into the adage that personnel is policy—and ensuring that every person hired swears unflinching fidelity to the president and his ideology. In April 2024, the Office of Personnel Management (OPM) finalized a [new rule](#) designed to strengthen protections for the civil service. Rules, however, can be undone by a subsequent administration. To truly protect the civil service, Congress must pass the [Saving The Civil Service Act](#) which would prohibit a future president from resurrecting Schedule F through executive action.
- **Protect the rights of NGOs to operate.** Autonomy from the government is a key feature of civil society's success and vibrancy in the United States. Globally, [laws](#) have been used to stifle civil society, prohibit protests and clamp down on dissent. And in the United States there are nascent efforts to do the same, including [allegations](#) that the Internal Revenue Service (IRS) investigated disfavored organizations' tax exempt status and calls for Congress to [pass a law](#) under the guise of counter-terrorism to empower the executive branch to unilaterally withdraw an organization's tax-exempt status if they provide material support to terrorism, without adequately defining those terms or providing any due process guarantees. At the federal level, passing legislation like the [Saving the Civil Service Act](#) is crucial to ensure that the IRS is not stacked with loyalists willing to misuse their authority to attack disfavored groups and is instead staffed by experts committed to democracy and the rule of law. State governments should also play an active role in protecting civic space by repealing [laws](#) like those in Florida, Arkansas and Oklahoma that limit the rights to protest and boycott and ensure that their defamation laws are not opened up and misused to silence critics.
- **Create a White House Office of Democracy.** Promoting democracy is a full-time job—and it requires full-time White House staff. The White House should create a high-level Office of Democracy with direct access to the president whose mission is to identify and proactively address key challenges to our democracy including issues related to voting rights, corruption, election-related disinformation and the influence of dark money. Modeled on the [White House Office of Gun Violence Prevention](#), this office would not only coordinate between various federal government agencies that work on democracy issues to

ensure cross-pollination and coordination, but would also have full-time staffers dedicated to reaching out to state governments and nonprofits to learn from their experience. These outreach staffers will harness the creativity percolating among local governments and nonprofit organizations and bring those ideas to the federal level. State governments should also consider creating Offices of Democracy within their various executive branches to help grow and fortify democracy in each of the 50 states as well and ensure that local democracy-fortifying measures get noticed, implemented and spread.

- **Reduce political polarization by breaking out of political silos.** [Growing political polarization](#) is a threat to democracy and an [invitation to political violence and authoritarianism](#). Its prevalence has left people in America with the incorrect [impression](#) that they can never agree with members of the other political party. Would-be authoritarians have, in turn, inflamed polarization to advance their own political ambitions. To fight polarization we must build pro-democracy coalitions across lines of difference. Several civic models premised off what psychologists call “[contact theory](#)” have worked in other countries to reduce polarization and could be modeled here. In Ireland, [Citizens Assemblies](#), where a cross-section of citizens come together to discuss challenging social or political issues, are credited with finding common ground and furthering Ireland’s approach to climate change. In other countries, community and national service programs have fostered national unity and a greater sense of purpose by having young adult citizens participate in one year of paid national service. Models like [Teach for America](#), [AmeriCorps](#), and President Biden’s [Climate Corps](#) modeled after FDR’s [Civilian Conservation Corps](#), have been introduced in the United States and have been successful at breaking down silos and polarization. To implement this approach, Congress should pass legislation like Rep. Joe Neguse’s [Civic Corps Act](#) or Senator Todd Young and Senator Jack Reed’s [Unity Through Service Act](#).
- **Build global democratic solidarity.** The Biden Administration’s Summits for Democracy attempted to build global democratic solidarity to push back against authoritarianism, corruption and human rights abuses. Unfortunately, the Summits [failed](#) to deliver for several reasons including the lack of civil society input and failure to create sustainable channels of communication and coordination among global democracy advocates. Any future Summit must incorporate lessons from civil society. Moreover, the White House must realign its foreign policy levers to create sustainable channels of communication and coordination amongst global democratic leaders. Much of this work can be championed by the State Department’s Bureau of Democracy, Human Rights, and Labor, the State Department’s Bureau of Education and Cultural Affairs International Visitor Leadership Program, and USAID’s Bureau for Democracy, Human Rights, and Governance.

## RESOURCES

- [Upholding Civil Service Protections and Merit System Principles](#), 89 Fed. Reg. 24,982 (2024).
- Gabe Lezra & Diamond Brown, [FAQ: The conservative attack on the merit-based civil service](#), CREW (2024).
- [Executive Actions to Protect and Strengthen Our Democracy](#), Declaration for American Democracy, (2022).
- Rachel Kleinfeld, [Closing Civil Space in the United States: Connecting the Dots, Changing the Trajectory](#), Carnegie Endowment for International Peace (2024).
- Kate Aronoff, [This Bipartisan Bill Could Give Trump Huge Power Against His Enemies](#), The New Republic (2024).

**Examples of legislation to implement these proposals:**

- [H.R. 1002/S. 399](#), Saving The Civil Service Act (118th Congress)
- [H.R. 5724](#), Civic Corps Act of 2023 (118th Congress)
- [S. 2150](#), Unity Through Service Act of 2023 (118th Congress)

# Presidential accountability and ending the imperial presidency

In recent years, the executive branch has grown **more powerful** and less accountable than ever before, laying the groundwork for a would-be authoritarian to abuse the power of the office. Historically, executive power has been constrained by **unwritten norms** of conduct premised on the idea that a president would exercise restraint and avoid abusing their immense powers. If norms were to fail, the assumption was that formal measures of accountability, chief among them oversight, impeachment and criminal investigation and prosecution, could fill in. However, this assumption had never been seriously tested. And now that it is being tested, it is failing spectacularly, making clear the urgent need to rethink and refortify our accountability regime.

Part of the reason these assumptions have failed is that political extremists are now increasingly **relying** on a radical interpretation of the unitary executive theory that rejects all forms of accountability from the other two branches of government—a theory that the Supreme Court has now embraced. This was exemplified by Donald Trump’s term in office. His administration **routinely ignored** congressional subpoenas. It **refused** to provide documents to investigators and repeatedly prevented high level officials from testifying at hearings. It even managed to **stymie and undermine** the congressional **impeachment** power. And it faced little to no accountability for these violations.

Criminal accountability for presidential misconduct hasn’t fared much better. During his tenure in office, Trump **repeatedly interfered** with Special Counsel Robert Mueller’s investigation into foreign efforts to influence the 2016 election, a pattern of conduct that amounted to **obstruction of justice**. Yet the Department of Justice refused to charge him, relying on an internal **memo** which asserts that a sitting president cannot be criminally indicted. Since leaving office, Trump has been **convicted** of 34 felony counts of falsifying business records related to his hush money payments, and **indicted on three other, separate occasions**, including for his attempts to undermine the 2020 elections, culminating in the January 6th insurrection. Unsurprisingly, these prosecutions have been decried as election interference by loyalists both inside and outside of the government. Frighteningly, the Supreme Court’s decision in *Trump v. United States* said that a former president has absolute immunity for official acts even if those acts violate generally applicable criminal laws. This irresponsible ruling places the United States **virtually alone among our democratic peers** on

the international stage. It is now up to the lower court to determine whether the conduct Trump is accused of committing are official acts within the bounds of that immunity. If Trump's actions are deemed official acts, should he return to the presidency he is well-positioned to follow through on his [promise to stop any federal prosecutions](#) against himself or his allies, including potentially by expanding the pardon power and [pardoning himself](#).

Only in an authoritarian regime can a leader do whatever they want whenever they want without any legal recourse or repercussions. For democracy to survive, we must build a legal regime where the legislature and judiciary can serve as meaningful checks on the executive, and where a former president is not shielded from accountability simply because they orchestrate their criminal acts from the Oval Office. That is what the solutions offered in this chapter strive to do. They aim to ensure that the highest officials in the land cannot act with impunity while in office; that Congress has the tools it needs to protect the people's interests from executive overreach; that the president cannot rely on radical legal theories to evade accountability for criminal acts; and that there are truly independent oversight mechanisms within the executive branch. These changes will improve both public confidence and internal mechanisms that hold all officials accountable for serious misconduct.

- **Overtune the Supreme Court's disastrous opinion in *Trump v. United States* placing the president above the law.** In a stunning decision that ignored American history and legal frameworks, the Supreme Court in [Trump v. United States](#) held that a former president cannot be criminally prosecuted for official acts taken while in office. Effectively making the president into a king unbound by basic legal restrictions that everyone else is required to follow, the decision has left to the lower courts the job of defining what is and is not an official act. As the principal dissent in the case rightly points out, the decision is "atextual, ahistorical, and unjustifiable," placing our democracy in great danger. Congress must pass, and the states must ratify, a constitutional amendment overturning the Supreme Court's decision and making clear that presidents are not immune from criminal prosecution.
- **Strengthen the legal framework for investigating presidents, vice presidents and other high-ranking officials.** The legal authority for the attorney general to appoint a special counsel to investigate presidents, vice presidents and other high-ranking officials for criminal violations is codified in [DOJ regulations](#). As former Attorney General William Barr's efforts to [undermine](#) Special Counsel Mueller's investigation into foreign interference in the 2016 presidential election and Trump's repeated [efforts to interfere](#) in that investigation made clear, undermining those regulations is easily done. It is therefore crucial that Congress codify the special counsel's legal authority in statute. A special counsel statute should clarify the circumstances when appointing a special counsel is required, including when there are credible allegations of criminal misconduct involving a president, vice-president or other high-ranking official, allow for expedited review of any attempt to fire a special counsel by the United States District Court for the District of Columbia, require the special counsel to disclose to Congress all prosecution and declination determinations without the prior approval of the attorney general and ensure that Congress has access to the special counsel's investigative findings.
- **Rescind the Department of Justice's memo that a sitting president cannot be indicted.** The Department of Justice has a longstanding [policy](#) that prohibits a sitting president from being indicted. Special Counsel Mueller, who was appointed to investigate



foreign interference in the 2016 presidential election, specifically pointed to that policy when he declined to indict then-President Trump for acts he took both prior to and after assuming the presidency. The Department of Justice should rescind this policy. Even if the Department of Justice rescinds their memo, an attorney general might be hesitant to indict the president who appointed them. Congress should therefore pass a statute making clear that the statute of limitations does not run while a president is in office so they cannot run out the clock on criminal liability. Although the Supreme Court has set an absurdly high bar for prosecuting a former president for official acts, presidents should not be beyond the law and, in fact, leaders of other democracies have been indicted and prosecuted with [regularity](#) and without democratic consequence.

- **Establish a “rocket docket” to make it easier and faster for Congress to enforce subpoenas.** Congress has broad authority, confirmed by Supreme Court precedent, to conduct investigations including by issuing subpoenas for documents and oral testimony. Historically, when a congressional subpoena was issued and there was resistance to the subpoena from the executive branch, Congress would negotiate and find a compromise where some, but not all, documents and testimony were provided. However, in recent years there has been a trend of outright rejection of congressional subpoenas. Although Congress has the legal authority to refer individuals for [criminal contempt](#) for subpoena noncompliance by asking the U.S. Attorney General for the District of Columbia to bring criminal charges against the violator, as it did with former Trump officials [Peter Navaro](#) and [Steve Bannon](#), this approach is [painfully slow](#) and there is no legal requirement for the Department of Justice to pursue contempt charges. As a result, the route towards subpoena enforcement frequently does not move quickly enough to meet the needs of a time-limited investigation. It is therefore crucial that Congress create a judicial “[rocket docket](#)” for subpoena lawsuits to bypass the ordinarily slow litigation process and enhance Congress’s ability to conduct oversight on urgent matters of presidential abuse of power.
- **Strengthen Congress’s subpoena power.** Subpoenas are an essential tool for congressional committees to conduct oversight and investigations into potential abuses of power, corruption and misconduct. Although Congress can refer individuals to the Department of Justice for criminal prosecution who disobey subpoenas for contempt of Congress, the institution lacks robust mechanisms to enforce its subpoenas, limiting its ability to hold executive branch officials to account, as was highlighted by the January 6th [committee’s investigation](#). To restore the legislative branch’s role as a check and balance on executive power, the House and Senate should enforce financial penalties for agency officials who refuse to comply with subpoenas. Congress should also establish a new independent counsel office with narrow, limited authority to investigate and prosecute senior executive branch officials for criminal contempt or obstruction of Congress.
- **Create an Inspector General for the White House.** The Executive Office of the White House employs over 4,000 employees and includes key decision making bodies including the National Security Council, the Office of Management and Budget and the Domestic Policy Council among others. Yet, it lacks a key internal accountable mechanism that is present in other executive branch agencies—an Inspector General. An Inspector General—or even a quasi-Inspector General—on equal footing with other senior White House aides could [provide necessary investigations and oversight](#) and, in the process, act as a watchdog to curb an authoritarian administration’s worst excesses.

- **Prevent abuse of the pardon power.** While the [Constitution](#) grants the president broad power to “grant Reprieves and Pardons for Offenses against the United States,” that power is not limitless and could be easily abused by a leader who wants to cement his power by pardoning his or her political cronies. With former President Trump and others in his orbit openly discussing plans to pardon insurrectionists en masse—and even to pardon Trump himself—it is crucial that Congress and the courts enforce these limits despite the Supreme Court’s decision in [Trump v. United States](#) which seems to make it harder to challenge a corrupt pardon. Specifically, Congress should pass legislation like the Protecting our Democracy Act which codifies the Department of Justice Office of Legal Counsel’s 1974 [memorandum](#) prohibiting self-pardons and makes clear that a pardon made or offered with the intent to influence or stop an ongoing investigation constitutes obstruction of justice and violates the federal bribery statute. That legislation should further clarify that when a president obstructs justice they are not committing an official act within the meaning of [Trump v. United States](#). Moreover, Congress should also pass legislation like the [Presidential Pardon Transparency Act](#) that requires immediate disclosure of all pardons to Congress and the American people.

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- Robert S. Mueller, [Report On The Investigation Into Russian Interference In The 2016 Presidential Election](#) (2019).
- Noah Bookbinder et al., [Why President Trump Can’t Pardon His Way Out of the Special Counsel and Cohen Investigations](#), American Constitution Society & CREW, (2018).
- Noah Bookbinder et al., [Presidential Obstruction of Justice: The Case of Donald J. Trump](#), Brookings, (2018).
- Todd Garvey, Cong. Rsch. Serv., LSB10864, [Litigating the January 6th Committee’s Subpoena to former President Trump](#) (2022).

## Examples of legislation to implement these proposals:

- [H.R. 5314/S. 2921](#), Protecting Our Democracy Act (117th Congress)
- [H.J. Res. 193](#), Constitution Amendment Providing No Immunity From Prosecution for Presidents (118th Congress)
- [H.R. 1348/S. 318](#) Presidential Pardon Transparency Act of 2021
- [H.R. 6079](#), Congressional Subpoena Compliance and Enforcement Act (117th Congress)
- [H.Res. 406](#), Congressional Inherent Contempt Resolution (117th Congress)
- [S. 3446/H.R. 7694](#), Abuse of the Pardon Prevention Act (118th/116th Congress)

# Preventing the manipulation of courts



## **An independent and ethical judiciary that upholds the rule of law is fundamental to our democracy. But what happens when the court's independence is no longer certain?**

Burgeoning authoritarian regimes frequently undermine citizens' faith in the institutions charged with upholding the rule of law. In countries like Hungary and [Poland](#), authoritarian leaders have manipulated judge and forum selection to ensure outcomes that benefit the ruling party and, in the process, ensured that the concept of judicial independence becomes obsolete. In [Hungary](#), for example, Prime Minister Viktor Orban [packed the Constitutional Court](#) with partisan judges, extended term limits from 9 to 12 years and attempted to create an entirely new—and separate—[court system](#) controlled by the executive branch that would have had exclusive jurisdiction over “public administration” cases including politically sensitive matters like corruption, electoral disputes and the right to protest. This is a key component of the blueprint for democratic backsliding that is being used by authoritarian leaders across the globe. It is widely understood that once judicial independence is compromised, the slide from a democracy into full autocracy is often a matter of when, not if.

This phenomenon is playing out in the United States as well. For several decades there has been a [concerted attempt](#) to pack the federal judiciary with ideologues, aided in large part by the

[elimination](#) of the filibuster for judicial nominations. The Trump administration packed the courts, confirming the second most judicial nominees in a single term since President John F. Kennedy was in office and [appointing](#) more court of appeals judges than any presidential predecessor. And Congress shamelessly applied different rules to Supreme Court nominees depending on which political party nominated them, [exemplified by](#) the Senate’s refusal to consider Merrick Garland’s nomination more than seven months before election day in 2016, compared with its rush to seat Amy Coney Barrett after voting in the 2020 presidential election had already begun.

But the assault on judicial independence is not limited to packing the courts, with some ideologically extreme litigants using procedural intricacies to manufacture desired outcomes. These litigants have consistently filed cases with nationwide implications in single judge districts—often in the U.S. District Court for the Northern District of Texas in Amarillo where the judge, Judge Matthew Kacsmaryk, is known to be ideologically sympathetic. In other circumstances, the Supreme Court’s so-called “[Shadow Docket](#)” has been embraced to decide cases of exceptional importance in the dark—and without full briefing and input, thereby bypassing the scrutiny and transparency that accompanies briefing and oral argument.

In other circumstances, former President Trump verbally attacked judges seemingly in an attempt to shame or scare them into ruling in his favor. Trump [claimed](#) that a judge could not be impartial due to his ethnicity. At other times he has unleashed his fury at the courts and judges who ruled against him, claiming that they were “[political](#)” or “[corrupt](#).” As the July 2020 [murder](#) of a federal judge’s son in New Jersey at the hands of a disgruntled former litigant has reminded us, rhetoric like this can easily turn violent.

As public attacks on the judiciary’s independence mount, faith in the judiciary is declining. Today, public confidence in the judiciary has reached one of its lowest points in decades, with only [41 %](#) of the public approving of the Supreme Court and less than half of Americans having trust and confidence in the judiciary’s work writ large. For decades, judges and justices have routinely and publicly [tested](#) the limits of the courts’ absurdly weak ethical regimes. Under the current rules, judges and justices make [inconsistent decisions](#) regarding what type of financial or personal [conflict](#) requires recusal, and routinely hear cases where they have a financial conflict of interest that they failed to disclose. In other circumstances, they have accepted overtures from activists, epitomized by the “[Operation Higher Court](#)” scandal where religious right activists bought access to and influence over Supreme Court justices. And perhaps more disturbingly, some justices—most notably, Justices [Thomas](#) and [Alito](#)—have refused to recuse themselves from cases despite having a clear personal bias or prejudice against a party. This total failure to live up to the most basic ethical requirements has contributed to [declining public confidence](#) in the judiciary, leaving the public with the impression that distrust of the institution is merited—a distrust that could easily be weaponized by a leader who doesn’t want to be constrained by the Court’s rulings.

The erosion of ethical norms and the unyielding efforts to pack the courts and manufacture desired outcomes amount to twin assaults on the judiciary’s legitimacy. These assaults must be dealt with concurrently. After all, building a more ethical, transparent and independent judiciary is the only way to counter efforts to steer the court in an authoritarian direction. Otherwise, the judiciary risks becoming an agent of authoritarianism, rather than a bulwark against it.

- **Protect the safety and security of judges, court personnel and jurors.** Democracy depends on judges and jurors who are free to make decisions without fear of reprisals and

court personnel who aren't worried about their physical wellbeing when they enter the courthouse doors. Without guarantees for their safety and security, judicial decisions may be compromised, undermining the promise of impartial administration of justice. Congress took a meaningful step towards protecting judicial security when the [Daniel Aderl Judicial Security and Privacy Act](#) was signed into law in the wake of the murder of federal Judge Esther Salas' son by a disgruntled litigant. The law prohibits data brokers from selling a judge's personally identifiable information and prohibits the government from disclosing it. These protections should also be given to court personnel. Jurors also have unique security needs, particularly those who serve on juries in high-profile political corruption cases. In federal cases, a judge can decide to use an "anonymous" jury, where juror names, addresses and other identifiers are withheld from litigants and the public. Although in the [interest of transparency](#) anonymous juries should never be the presumption, state legislatures should pass statutes that permit for juror anonymity in high-profile state criminal cases where the litigant has a well-documented history of harassing, harming or intimidating detractors. In addition, courts should use sequestration as needed, and Congress and state legislatures should provide courts with sufficient appropriations to finance security needs.

- **End outcome-determinative judge and forum selection:** Outcome-determinative judicial forum selection has been a tactic of elected autocrats in countries around the world, including in [Hungary](#) where a single government official can [choose](#) which cases are assigned to which judges and judicial panels. In the United States, creative litigants are using quirks buried within the rules of civil procedure to achieve the same ends. This is exemplified by the seemingly [unending litany](#) of [high-profile](#) cases filed in one obscure judicial district in Texas, where the case is virtually guaranteed to be assigned to Judge Matthew Kacsmaryk. Judge Kacsmaryk has in turn become one of the most [powerful](#) men in America. The Judicial Conference recently released [toothless guidance](#) to address the problem that some judges have refused to follow. To truly fix this problem, Congress must get rid of [single-judge divisions](#).
- **Build an ethical judiciary that people trust so judges have the political power to push back on overreach.** Historically, Congress has played an active role in regulating the Supreme Court's docket, jurisdiction, size and inner workings, including passing legislation to govern judicial ethics, [such as](#) the Ethics in Government Act and the Ethics Reform Act. Thanks in part to repeated ethical scandals, [public trust](#) in the judiciary and in the Supreme Court is near its all time low. This is a crisis of democracy because without a judiciary that is perceived as legitimate, fair and impartial, our democracy is in peril. Unfortunately, the Supreme Court's November 2023 nonbinding [Code of Conduct](#) is woefully insufficient to meet the moment. Congress must step in to require a binding Code of Ethics for the Supreme Court like that proposed under the [Supreme Court Ethics, Recusal, and Transparency \(SCERT\) Act](#) and establish an Inspector General for the Judiciary with the responsibility to investigate and ferret out waste, corruption and abuse. The Court should also play a role, [establishing a recusal mechanism](#) whereby the Chief Justice would designate a panel of retired federal judges with deep expertise and unquestioned integrity to advise the justices with respect to motions for recusal and provide the justices with confidential advice as to their obligations under the laws, rules and standards governing their conduct.
- **Depoliticize the judicial nominations process by enacting 18-year staggered term limits for all Supreme Court Justices.** The judicial nominations process for all judges, and particularly for Supreme Court justices, has become fraught with political gamesmanship. When a judiciary is vulnerable to charges of politicization and corruption, like our judiciary is quickly becoming,

authoritarian forces are more readily able to ignore judicial decisions or successfully argue that the judiciary needs to be overhauled—thereby allowing them to appoint their authoritarian acolytes to the bench. Implementing staggered 18-year term limits for the Supreme Court would significantly help alleviate the politicization of the nominations process and minimize the corruption of any individual justice or justices. Terms with regularized appointments would guarantee that each president has an equal opportunity to appoint justices, and, as a result, would lower the stakes of each individual nomination. It would also ensure that the Court looks more like the nation it serves, reflecting public opinion and modern day values while preserving judicial independence and the constitutional requirement of lifetime tenure by having justices continue to serve in senior status after their term expires, similar to how senior status is used for other federal judges.

- **Statutorily eliminate the Supreme Court’s shadow docket.** Over the past [several years](#), the Supreme Court has steadily moved away from its longstanding tradition of issuing almost all decisions after full briefing and oral argument and instead has embraced the so-called “shadow docket” where they use procedures intended for emergency cases to quickly, and without full briefing or oral argument, resolve substantive non-emergency cases that have a large impact on peoples’ lives. By issuing unsigned, unexplained and unbriefed decisions, often in the dark of night and along ideological lines, the Supreme Court is rapidly undermining its own legitimacy and leaving its emergency docket susceptible to manipulation by outside forces. Congress must step in and act. Congress should use its constitutional authority over the court’s jurisdiction to require written explanations by the Supreme Court of its decisions and the disclosure of votes by justices in cases filed within the Court’s appellate jurisdiction that request injunctive relief, as Senator Blumenthal’s proposed bill, the [Shadow Docket Sunlight Act](#), would require. The Court itself should also [amend](#) its internal rules to provide clearer guidelines for the procedure and timing of emergency applications and make clear that applications for emergency relief will not be granted unless the relief requested is a true emergency, such as in death penalty cases.
- **Allow a wider diversity of courts to adjudicate claims.** Our legal system designates some claims to be adjudicated in state courts, and others to be adjudicated in federal courts. For example, the Federal Election Campaign Act (FECA) prohibits state courts from adjudicating federal campaign finance violations. In an era where federal courts are becoming more hostile to democratic values, this division can be outcome determinative. In order to allow states to adjudicate more federal claims, Congress should amend statutes that prohibit state courts from hearing federal claims, like exists in the FECA provided that the relief sought is limited to their state.

## RESOURCES:

- [Code of Conduct for Justices of the Sup. Ct. of the U.S.](#), (2023).
- Judge Jeremy Fogel & Noah Bookbinder, [Building public confidence: how the Supreme Court can demonstrate its commitment to the highest ethical standards](#), CREW (2023).
- Brie Sparkman Binder & Debra Perlin, [Americans and the Court: How Public Outcry Has Influenced the Court to Address Judicial Ethics Crises](#), 52 Hofstra L. Rev. 631 (2024).
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- Jodi Kantor, [At Justice Alito’s House, a ‘Stop the Steal’ Symbol on Display](#), N.Y. Times (2024).
- Justin Elliot et al., [Justice Samuel Alito Took Luxury Fishing Vacation With GOP Billionaire](#)

[Who Later Had Cases Before the Court](#), ProPublica (2023).

- Joshua Kaplan et al., [Clarence Thomas and the Billionaire](#), ProPublica (2023).
- [Texas's Unconstitutional Abortion Ban and the Role of the Shadow Docket Before the S. Comm. on the Judiciary](#), 117th Cong, (2021) (Testimony of Stephen I. Vladeck).

**Examples of legislation to implement these proposals:**

- [H.R. 3163/S. 4096](#), End Judge Shopping Act (118th Congress)
- [H.R. 926/S. 359](#), Supreme Court Ethics, Recusal, and Transparency Act (118th Congress)
- [H.R. 8098/S. 4167](#), Judicial Ethics Enforcement Act of 2024 (118th Congress)
- [H.R. 3973/S. 1908](#), Judicial Ethics and Anti-Corruption Act (118th Congress)
- [H.R. 7676](#), Judicial Integrity Act (118th Congress)
- [H.R. 8830](#), High Court Gift Ban Act (118th Congress)
- [H.R. 8609](#), Supreme Court Ethics and Investigations Act (118th Congress)
- [H.R. 5566/S. 4706](#), Supreme Court Tenure Establishment and Retirement Modernization Act (118th Congress/117th Congress)
- [S. 3096](#), Supreme Court Biennial Appointments and Term Limits Act of 2023 (118th Congress)
- [S. 4388](#), Shadow Docket Sunlight Act of 2024 (118th Congress)

# Blocking the abuse of law enforcement and emergency powers

**A fundamental value of democracy is that the law should be upheld by an impartial justice system in which all people are treated equally, regardless of ideology or status. When unaccountable political actors are able to manipulate the judicial system and weaponize law enforcement agencies to consolidate power, democracy is imperiled.**

Presidents have immense power which they can use to manipulate law enforcement and the justice system toward authoritarian ends. For example, presidents can issue oppressive [executive orders](#), appoint [bad actors](#) to head federal law enforcement agencies such as the Department of Homeland Security or the Federal Bureau of Investigations, or place pressure on the judicial system to [go after political opponents](#). Presidents can also abuse their power by mobilizing the National Guard, as [Trump](#) did in 2020 in response to Black Lives Matter protests, and by directing law enforcement agencies to intimidate voters at polling stations under the guise of guarding against voter fraud, as Trump [suggested](#) he would do in 2020. Moreover, presidents can be assisted in this by the Department of Justice's Office of Legal Counsel which has consistently taken [expansive views](#) of presidential and law enforcement powers and adopted legal views designed to insulate presidential actions from judicial scrutiny. However, this threat does not come from the presidency alone. [State](#) and [local](#) officials can also deploy law enforcement agencies in pursuit of political, personal or financial interests, at the expense of public safety or civil liberties.

These frightening examples are all the more troubling given the historical context of policing in the United States. At their best, law enforcement agencies can preserve public safety and, as we saw in the [heroic actions of the U.S. Capitol Police](#) and D.C. Metropolitan Police on January 6, 2021, can help safeguard elected officials and the public, the democratic process and the infrastructure of democracy. But in the United States, law enforcement has also long been wielded as a tool to suppress dissent and used to intimidate and maintain the status quo. The NAACP found that the roots of today's law enforcement can be traced back to oppressive [slave patrols](#) which began in the 1700s. Modern police forces were used to [suppress labor movements](#) in the late 1800s, brutally crack down on non-violent [civil rights protests](#) in the 1960s and consistently target and control communities of color. These anti-democratic uses of policing persist today with [police killings](#) of Black people with impunity.

This history likely explains, at least in part, why some law enforcement agencies themselves have ties to [extremist, violent politics](#). Thus, it is all the more important to prevent an authoritarian leader from wielding law enforcement power towards unlawful ends.





Whether the threat of authoritarianism is coming from a local sheriff or the president, accountability, effective oversight and robust checks and balances are crucial to prevent the weaponization of law enforcement for anti-democratic aims.

- **Create statutory safeguards to prevent corrupt attempts to influence law enforcement, obstruct criminal investigations and use investigations to target political opponents.** The rule of law is threatened when a president injects personal or political imperatives into what is supposed to be the independent and neutral application of law by the Department of Justice. Yet, as we have seen over the past several years, there has been a systematic weakening of the norms that have historically protected the Department of Justice from interference from the president, including attempts to [obstruct criminal investigations of political allies](#) and calls to weaponize the DOJ to [investigate and prosecute political adversaries](#). There are [steps](#) Congress can take to ensure this does not happen. Congress should codify limitations [put in place by the Biden Administration](#) on communication between the [DOJ](#) and the White House to ensure that the DOJ does not become a tool of any administration to target political opponents by a vindictive president. Congress should also require law enforcement agencies to log enforcement-related communications and inquiries that they have with any White House officials or members of Congress.
- **Root out extremism within the ranks of the federal government and law enforcement.** Domestic terrorism has become “the most urgent terrorism threat the United States faces today,” according to the [White House’s National Strategy for Countering Domestic Terrorism](#). White supremacy and racism are often part of the driving ideologies behind violent domestic extremist groups in America such as the Oath Keepers, whose leaders have been found [guilty of seditious conspiracy](#) and whose members stormed the Capitol on January 6th. Yet, a [2022 investigation](#) found that more than 300 members of the Oath Keepers identified themselves as current or former Department of Homeland Security employees. Other investigations have revealed similar ties to violent extremist groups at the state and local level. In Chicago, at least [27 current and former police officials](#) were found to have ties to the Oath Keepers according to a leaked membership roster from the organization. Although the Department of Homeland Security’s [Domestic Violent](#)

[Extremism Internal Review Working Group](#) and the Department of Defense's [Countering Extremist Activity Working Group](#) have taken some steps to identify and root out extremism, federal agencies must do more to identify and report extremism within their ranks. All federal agencies should set up working groups to counter extremist activity and issue publicly accessible reports documenting their progress. The White House should issue government-wide guidance on how to improve the vetting process for full time and contract hires to root out individuals with ties to violent extremist groups consistent with the requirements of the First Amendment, and should ensure that there are adequate whistleblower protections in place for government employees and government contractors to safely report extremist activity and connections.

- **Reform the Insurrection Act.** The Insurrection Act permits the president to deploy military and National Guard troops within the United States to suppress civil disorder, rebellion, or insurrection. The law, however, is [vague](#) and has very few safeguards against abuse, making it possible for a leader with authoritarian tendencies to easily manipulate it for nefarious purposes. This is evident in the fact that Trump reportedly considered invoking the Insurrection Act twice when he was in office: [once](#) in response to Black Lives Matter protests, and [again](#) to hold on to power after losing the 2020 election. He has also [talked openly](#) about using the legislation should he be reelected to tamp down dissent to any of his policies. We must amend the Insurrection Act to provide clear criteria for domestic deployment of the military, including precise definitions of “civil disorder, rebellion, or insurrection” and ban the deputization of non-military private citizens. Moreover, the legislation should be amended to mandate presidential consultation with state governors before deploying troops into any state and implement a time restriction on the president’s power to deploy troops, not to exceed 30 days without renewed congressional authorization.
- **Amend the National Emergencies Act to stipulate that an emergency terminates after 30 days unless it is extended by Congress.** Emergency powers grant the president extended authority during crises, but they are often misused and abused, including when Trump [fabricated](#) an emergency to secure funding for his border wall after Congress refused to give him the money. Other emergency powers could grant a leader with authoritarian tendencies even more troubling powers, from seizing control of the internet to declaring martial law. To prevent the abuse of these powers, the National Emergencies Act should be amended to stipulate that a national emergency declared by the president terminates 30 days after its declaration unless Congress enacts a joint resolution into law.
- **End the Office of Legal Counsel’s secret interpretations of law.** The Department of Justice’s Office of Legal Counsel has issued binding legal guidance on a range of controversial issues, including the [legality of warrantless surveillance](#), [the torture of enemy combatants](#) and whether Donald Trump should be charged with [obstruction of justice](#). But the vast majority of OLC opinions have been kept secret, creating a substantial body of secret law that is ripe for abuse. Congress should require that the attorney general publish all OLC opinions on the DOJ’s public website, accessible free of charge, and should amend the Freedom of Information Act to include final OLC opinions among the categories of records subject to mandatory proactive disclosure. To accomplish this, Congress must appropriate funds so OLC opinions can be reviewed for information that is classified or subject to executive privilege. Absent congressional action, the president should issue an

executive order requiring the OLC to proactively disclose its decisions.

- **Hold law enforcement accountable for misconduct.** No one is above the law, including law enforcement. Congress should pass the Special Inspector General for Law Enforcement Accountability ([SIGLEA](#)) Act which would establish a Special Inspector General to investigate misconduct within law enforcement agencies at all levels, offering whistleblower protections and confidentiality to those who report or witness police misconduct. By breaking the pervasive code of silence and shielding reporting officers from workplace harassment, SIGLEA would address the inherent conflicts in internal investigations. Furthermore, SIGLEA and other legislative measures would tackle the formidable barrier of qualified immunity, which often shields officers from civil liability even in cases of clear misconduct. To that end, Congress should pass the [George Floyd Justice in Policing Act](#) which would restrict qualified immunity and create a [nationwide police misconduct registry](#). Additionally, officers who are terminated for cause should not escape accountability by relocating to another jurisdiction. All law enforcement agencies should be required to use the [National Law Enforcement Accountability Database \(NLEAD\)](#) in their hiring practices. NLEAD improves hiring, promotion and retention practices by tracking criminal convictions, suspensions, terminations and civil judgments, as well as sustained complaints of serious misconduct. The database provides hiring officials with the necessary information to assess candidate suitability, filtering out individuals with a history of serious misconduct or extremist behavior.

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- Off. of the Chief Sec. Officer, U.S. Dep't of Homeland Sec., [Report to the Secretary of Homeland Security Domestic Violent Extremism Internal Review: Observations, Findings, and Recommendations](#) (2022).
- [Letter](#) from Citizens for Responsibility and Ethics in Washington et al., to Alejandro Mayorkas, Secretary, Dep't of Homeland Sec., (2023).
- Nikhel Sus, [States must lift the veil of secrecy over police misconduct](#), CREW (2020).
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- [Testimony on the Public Availability of OLC Opinions FY 2025 Appropriations Bill for the Senate Appropriations Commerce, Justice, Science Subcommittee](#), CREW (2024).
- Joseph Nunn, [The Insurrection Act Explained](#), Brennan Center for Justice (2022).
- [Memorandum for all White House Staff on Prohibited Contacts With Agencies and Departments](#), (2021).

## Examples of legislation to implement these proposals:

- [H.R. 5314/S. 2921](#), Protecting Our Democracy Act (117th Congress)
- [S. 1524](#), Expanding Whistleblower Protections for Contractors (118th Congress)
- [H.R. 8597](#), Transparency in Government Act (118th Congress)
- [S. 4699](#), Insurrection Act of 2024 (118th Congress)
- [H.R. 3988/S. 1912](#), Article ONE Act (118th Congress)
- [S. 3858](#), DOJ OLC Transparency Act (117th Congress)
- [H.R. 6762](#), Special Inspector General for Law Enforcement Act (117th Congress)
- [H.R. 1280](#), George Floyd Justice in Policing Act (117th Congress)

# Preventing public corruption

**A healthy democratic society requires institutions that can successfully fight and deter public corruption. Uncontained, corruption will infect every element of democratic society, allowing power to be consolidated in the hands of a few and chipping away at society's foundations by undermining public confidence in democracy itself.**

In turn, the public's waning confidence in democracy can harm the institutions of government, producing a vicious cycle where weakened democratic institutions are increasingly unresponsive to society's problems and unable, or unwilling, to control corruption. Unfortunately for the United States, Donald Trump's rise to the presidency made it strikingly clear that the tools Congress, the executive branch and the judiciary had built to prevent American officials from profiting from their public office—financially, politically and electorally—did not work. This is a crisis of democracy.

As president, Donald Trump repeatedly [lined his pockets](#) with benefactor's cash. Money from [foreign and opaque sources](#) flooded into his businesses as watchdogs sought in vain to prevent his unconstitutional profiteering. And, since he left office, he and his allies have profited handsomely from connections they developed while in office, including [Jared Kushner](#) and [Steven Mnuchin](#) who both received billions from Saudi Crown Prince Mohammed bin Salman's Saudi Public Investment Fund to finance their post-White House professional endeavors. Trump however is not the only government official to illegally line his pockets. Recently, Senator Robert Menendez was convicted of accepting bribes from agents of the government of Egypt in exchange for official acts, and collecting handsome payouts from his foreign benefactors, including literal gold bars. Rep. Henry Cuellar was recently indicted for similar conduct—in his case, allegedly accepting bribes from a subsidiary of the government of Azerbaijan.

Meanwhile, members of Congress from both political parties and from across the country are [trading stocks](#), sometimes apparently based on information they learn in [confidential briefings](#), creating risks of conflicts of interest and of using their positions to enrich themselves. This practice made headlines at the beginning of the COVID-19 pandemic, as [reports](#) emerged of members of both parties who, after attending a closed-door COVID-19 briefing, bought and sold stocks, including in [pharmaceutical](#) and [teleworking](#) companies. Scandalized, the public demanded an end to congressional stock trading and ownership, but every attempt to pass this bipartisan legislation has [stalled](#).

The judiciary is far from immune from this crisis. In 2021, bombshell [reporting](#) revealed that dozens of federal judges had heard hundreds of cases in which they had a financial interest in one of the parties. These conflicted judges included those appointed by Republican and Democratic

presidents, and impacted cases from every region of the country. In the wake of that scandal, reports began to emerge of potential serious corruption by members of the Supreme Court. The public learned of influence peddling operations such as “[Operation Higher Court](#)” which bought access to (and potential influence over) Supreme Court justices, as well as astounding [ethics violations](#) on the part of individual justices. Justice Clarence Thomas’s repeated [acceptance](#) of hundreds of thousands of dollars in gifts and travel, and conflicts related to his wife Ginni Thomas’s [support](#) of efforts to overturn the 2020 election as well as Justice Alito’s [association](#) with the “Stop the Steal” movement are prime examples of this ethics crisis at the highest level.

Public confidence in the institutions of American democracy is at [historic lows](#), thanks at least in part to these interconnected scandals. In a democracy, where public trust and confidence is crucial, this is a disaster. If we are to reverse this trend, we must build functioning legal and regulatory regimes to detect, deter and punish political corruption.



- **Restore the ability to hold officials accountable for corruption.** In a [series of cases](#) decided over the past 37 years, the Supreme Court has systematically gutted the country’s public corruption laws. The Court’s rulings have helped foster a culture of corruption and impunity in the halls of power. Congress should reverse this trend by passing legislation that rebuilds the “[honest services](#)” [doctrine](#), which protects the people’s right to an honest and impartial government and a fair provision of government services—and leaves officials liable to federal wire and mail fraud charges if they misuse their positions to enrich themselves. Specifically, Congress should pass legislation explicitly overturning the Supreme Court’s disastrous corruption decisions, including *McDonnell v. United States*, *United States v. Sun-Diamond Growers*, *Skilling v. United States*, *Snyder v. United States* and the numerous cases that have made it incredibly difficult to hold officials accountable for outright bribery and self-enrichment. Additionally, Congress should make it easier for the government to prosecute these cases on an expedited timeline, because the longer

corrupt officials are allowed to remain in power, the more their corruption will harm our democracy.

- **Build a functioning and strong congressional ethics regime.** Despite its status as the people's voice in government, Congress has unequivocally failed to create or enforce rules that ensure that members of Congress and their staff are serving the public interest rather than their own personal or financial interests. Its ethics system and rules are insufficient, outdated, unenforceable and riddled with loopholes and inconsistencies that permit outlandishly unacceptable conduct. The failure to establish and enforce stronger ethics rules undermines public trust in Congress and, by extension, our representative democracy. Congress should create a single, central ethics regulator covering both chambers, that provides general ethics guidance and develops a clear and concise congressional ethics manual, gives members individual advice on whether a member's conduct or assets constitute a conflict of interest, supervises divestment plans, ensures financial and any additional disclosures are accurate and released to the public and enforces the conflict of interest regulations by levying civil fines and making referrals to the Department of Justice. Additionally, Congress must address a series of more discrete conflicts of interest, including by prohibiting members from serving on boards of directors that include a fiduciary relationship, and limit members' participation and involvement with entities that lobby.
- **Create a FOIA-like process for Congress and legislative branch agencies.** Public access to government records is key for uncovering corruption and ensuring accountability. The Freedom of Information Act (FOIA) process, which is itself [in need of repair](#), generally allows the public access to federal records. However, Congress and legislative branch agencies like the Government Accountability Office and the Architect of the Capitol are not subject to FOIA. Some legislative branch agencies have [FOIA-like processes](#), but they lack adversarial appeal procedures whereby requestors can ask for a review of public records decisions. Congress should create a FOIA-like process for itself and legislative branch agencies allowing the public access to congressional records, as [recommended](#) by the National Archives' FOIA Advisory Committee. Crucially, this legislation should include requirements for the proactive disclosure of some information and an appeals process allowing requestors to challenge adverse decisions.
- **Require officials across all three branches of government to divest their individual financial interests in stocks and similar assets.** The public's belief in our democracy is inextricably linked to their faith that officials in positions of authority are acting in the public's interest rather than their own financial interests. That's why recent high-profile scandals where members of Congress appeared to trade stocks on insider information and Supreme Court justices accepted lavish gifts from influence-seeking benefactors have created a massive crisis of public confidence in our democratic institutions. The best way to rebuild that public faith is to design an ethics regime based on prophylaxis: stopping financial conflicts before they occur. Congress should require that the president and vice president, all high level executive branch officials, all members of Congress, all federal judges and Supreme Court justices, their spouses and their dependent children divest all of their individual stocks, or other similar financial holdings, and convert them into non-conflicting assets like mutual or index funds, or place their holdings into a qualified blind trust to be divested and managed by an independent trustee. Additionally, Congress should create a functional enforcement regime, including by expanding the federal financial

conflicts of interest statute, [18 U.S.C. § 208](#), to apply to all officials who are required to divest, including Supreme Court justices, and empowering the Office of Government Ethics and Department of Justice to levy significant fines should officials fail or refuse to comply with the law and regulations.

- **Expand and enhance the government’s anti-nepotism rules.** Nepotism allows authoritarian leaders to place family members who lack appropriate qualifications—other than unwavering loyalty to the authoritarian leader—in positions of power. This is incredibly dangerous to democracy, as it can help an authoritarian leader ignore democratic checks to retain political and financial power. Although the federal anti-nepotism statute, [5 U.S.C. § 3110](#), was intended to prevent government officials from hiring close relatives, the Trump Department of Justice decided to reverse [decades of established policy](#) to allow President Trump to hire his adult daughter Ivanka Trump and his son-in-law Jared Kushner to powerful roles in the White House, arguing that the law does not fully apply to the president and vice president. Congress should amend the nepotism statute to make it clear that the law applies to the president, the vice president and other high-level officials, and provide the relevant regulators, including the Office of Government Ethics, the Office of Personnel Management and the Merit Systems Protection Board, with the authority to enforce these laws and to hear appeals. Additionally, Congress should ensure that officials’ family members, and particularly those related to the president and the vice president, cannot benefit from government contracts.
- **Rebuild the broken campaign finance system to track and combat authoritarian attempts to influence policy.** In the years since the Supreme Court’s decision in [Citizens United v. FEC](#) completely upended the nation’s campaign finance laws, untraceable, mostly anonymous spending on federal elections has increased by [orders of magnitude](#), depriving people of their voices in our democratic system—and creating vectors for authoritarians to push their poisonous political ideology into the mainstream. Congress must stop this trend. Congress must pass, and the states must ratify, a constitutional amendment overturning the Supreme Court’s *Citizens United* decision. In the absence of such an amendment, Congress can take steps to improve the system—including by passing the DISCLOSE Act, which is designed to curb the influence of both corporate money and foreign money on our elections. Congress should also require near real-time disclosure of all the people who make large donations to super PACs or politically-engaged 501(c)(4) organizations during election cycles, and amend the tax code to prevent opaque nonprofit entities from serving as conduits to obscure the sources of election funds. Federal regulators should also take steps on their own to combat this problem, including having the Securities and Exchange Commission and other federal financial regulators require that public companies disclose all of their election and lobbying spending to their shareholders, and describe how they make decisions about political expenditures.
- **Pass legislation to make it simpler and easier to enforce the Emoluments Clauses.** The Emoluments Clauses, arguably the country’s most important anti-corruption laws, were designed to foreclose improper efforts to influence the president (and, in the case of the Foreign Emoluments Clause, other federal officials) and constitutionally ensure that corruption does not undermine public faith in democracy. Former President Trump’s repeated violations of the clauses—and the difficulty of enforcing them, in part because of Trump’s ability to delay any action throughout his term—made clear that further action

is required to ensure the clauses are not made irrelevant. Specifically, Congress should require presidents and vice presidents to divest all assets that might present a conflict of interest within 30 days of taking the oath of office. Under the Constitution, numerous entities, including the United States attorney general, state attorneys general, Congress and private citizens have standing to bring suit to enforce the Clauses. Congress should clarify that constitutional reality by creating a clear cause of action to enforce the divestiture requirement and Emoluments Clauses in federal court. Additionally, Congress should empower state officials to seize assets that violate the Emoluments Clauses, and levy hefty fines, up to ten times the amount of the assets, following a successful seizure.

- **Make federal officials' and candidates' finances more transparent.** In some instances, the public remains in the dark about the full scope of their elected and appointed officials' financial holdings, [including those of federal judges](#), and what conflicts of interest those might present. This is particularly problematic in the cases of presidents and vice presidents, who occupy the most important positions in the entire government. Congress should require presidential and vice presidential candidates to release more comprehensive financial disclosures, including tax returns, and require presidential and vice presidential candidates to disclose a detailed plan to address actual and potential financial conflicts of interest if elected. Congress should also pass a statute giving the public access to the tax returns of all presidentially-appointed and Senate confirmed officials—subject to certain redactions.
- **Strengthen the laws that prohibit government officials from accepting outside money, during and after their tenure in office.** During the Trump administration, it became apparent that the laws and regulations that aimed to prevent government officials from accepting money from outside sources included major loopholes that rendered them largely ineffective. For instance, loopholes seem to allow senior officials to accept non-governmental money through their private business holdings, including from foreign sources through contracts and business deals, if that official chooses not to take a government salary. This so-called Jared Kushner loophole allows wealthy government employees like Kushner or Ivanka Trump to evade a statute prohibiting them from getting paid by people or businesses outside the government *while they're being paid by the government* ([18 U.S.C. § 209](#)). That is because they didn't actually take a salary for their work in government, so they're not technically being paid by the government. That's why Congress should amend § 209 to make clear that the statute applies even if an official chooses not to take a government salary. Congress should also provide the Department of Justice with more authority to investigate and prosecute violations of this statute, and increase penalties for violations. And Congress should respond to Kushner and Steven Mnuchin's [brazen acceptance](#) of billions of dollars from Saudi Arabia by expanding and tightening the post-employment statute, [18 U.S.C. § 207](#)—ensuring that officials are not making policy as a [bid for future favor](#) in order to get money from corrupt sources after their tenure in office. And finally, Congress should also take [steps](#) to prohibit government officials from accepting corrupt money to fund their legal expense funds in the first place by limiting the amount donors can contribute to a legal expense fund; prohibiting legal expense funds from having multiple beneficiaries; and prohibiting lobbyists, foreign principals and their agents and other interested parties from donating to a legal expense fund.



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- [Hearing on Examining Stock Trading Reforms for Congress Before the H. Comm. on Admin.](#), 117th Cong. (2022) (statement of Donald K. Sherman, Senior Vice President & Chief Counsel, CREW).
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- Virginia Canter & Gabe Lezra, [Need for US Ethics Reform is Far From History: Kushner-MBS Deal Reflects Broken System](#), Just Security (2022).
- [CREW submits comment to OGE on legal expense fund regulations](#), CREW (2022).

## Examples of legislation to implement these proposals:

- [H.R. 9623/S. 5315](#), Anti-Corruption and Public Integrity Act (117th Congress)
- [H.R. 5314/S. 2921](#), Protecting Our Democracy Act (117th Congress)
- [H.R. 2678/S. 1171](#), Ending Trading and Holdings In Congressional Stock (ETHICS) Act (118th Congress)
- [H.R. 1679](#), Bipartisan Ban on Congressional Stock Ownership Act (118th Congress)
- [H.R. 3003](#), Bipartisan Restoring Faith in Government Act (118th Congress)
- [H.R. 7689](#), Gifts for Officials, Legislators, and Delegate (GOLD) Standard Act (118th Congress)
- [H.R. 8485/S. 4390](#), No Foreign Emoluments Without Congressional Consent Act (118th Congress)
- [S. 1486](#), Presidential Conflicts of Interest Act (118th Congress)
- [H.R. 1028](#), RIGHT Act (116th Congress)

# Countering foreign authoritarian influence

**Foreign governments across the ideological spectrum have always had a major interest in, and desire to influence, the United States. This is particularly true for governments that are not democracies. A supportive American government can give political legitimacy to unstable governments, negotiate advantageous diplomatic settlements on their behalf and provide much needed access to global capital markets. On the other hand, disapproval from the American government can lead to crippling economic sanctions, travel bans on foreign government leaders or even military confrontation.**

Therefore, it is perhaps unsurprising that a global network of authoritarian governments invests millions to influence America's foreign policy. Some countries use completely legal mechanisms to do so. For instance, in addition to paying high-priced lobbying firms millions to directly influence the U.S. government, the Saudi monarchy invested heavily in an influence campaign, including a [rather successful "calculated media campaign"](#) to convince America's policymakers and the general public that Crown Prince Mohammed bin Salman was a force for change in the region. The Kingdom then poured [even more](#) money into the United States after the Crown Prince allegedly ordered the murder of *Washington Post* columnist Jamal Khashoggi. The [United Arab Emirates](#) similarly poured money into a secret influence campaign in the United States that involved donating hundreds of millions of dollars to think tanks and universities, and secretly hiring former American military officials to lobby Congress and the executive branch—all while being accused of torturing political prisoners and even helping fund parts of Russia's war in Ukraine.

Other countries blatantly influence American policy, with some violating American criminal law in the process. In 2016 Russia infamously went so far as to illegally [meddle](#) in our elections to support Donald Trump, including by directly providing his campaign with damaging opposition research, hacking his opponent's servers and leaking their salacious materials as election day approached and running an online influence operation through Facebook to promote Trump's campaign. And in 2024 it appears that China tried a [similar](#) influence campaign to bolster Trump's candidacy, creating hundreds of sock puppet accounts on social media that share fake images disparaging President Biden and memes supporting Trump. Although there is so far no allegation that the Chinese effort violates American criminal law, it nonetheless shows how an authoritarian country can influence not just American policy but also American elections.

Other countries have resorted to more blunt tactics. Egypt, for instance, [bribed](#) Sen. Bob Menendez

to use his position as Chairman of the Senate Foreign Relations Committee to act on their behalf, including by safeguarding their ability to purchase American weapons. Azerbaijan engaged in similar behavior, allegedly [bribing](#) Rep. Henry Cuellar to act as their agent and support their claim to disputed territory in the Caucasus region against their geopolitical rival Armenia.

These global authoritarian influence campaigns are greatly bolstered by the United States' inability to detect and trace the money that flows into our economy. As the [Pandora](#) and [Paradise](#) Papers revealed, America's outdated and loophole-ridden rules and regulations allow bad actors to conceal the true source of funds behind webs of opaque shell companies, while local and state laws allow these same funds to land in impenetrable corporate structures or bottomless trusts. It is therefore possible that the global authoritarian movement to influence American policy and opinion is even more widespread and well-funded than we know.

- **Combat the flow of foreign authoritarian money into our elections and politics.** Over the past several years, we have begun to understand the full extent of the threat posed by foreign authoritarian governments funneling illicit cash through shell companies and opaque nonprofit entities into American politics and elections. This is another vector of potential corruption and authoritarian influence that must be closed. Congress should pass the [DISCLOSE Act](#), which would, among other things, make it harder for foreign governments to meddle in critical state and local ballot measure campaigns. Additionally, the president should direct federal agencies to make use of the Corporate Transparency Act and other tools to combat illicit financial flows to protect the integrity of our elections and our government officials, including by strengthening the statute that prohibits federal employees from supplementing their salary—18 U.S.C. § 209.
- **Stop foreign governments from evading election law to support their preferred candidates.** Special Counsel Robert Mueller's report on Russian interference in the 2016 election demonstrated the various ways that a committed foreign authoritarian government can evade the criminal prohibitions on foreign meddling in U.S. elections. In that instance Russia gave the Trump campaign an opposition research dossier, and the players involved avoided prosecution because Mueller concluded the criminal law prohibiting foreign donations of "things of value" was too vague. Recently, the Trump campaign was hacked and internal documents were stolen, [possibly](#) by Iran. Congress should amend criminal statutes prohibiting foreign campaign contributions and expenditures to specify that information, including opposition research, hacked or stolen data, polling or other information about voters constitutes a "thing of value," and statutorily create a duty to report any attempt by a foreign government or agent to help or harm a candidate for federal office by providing them with that information.
- **Overcome the Federal Election Commission's intransigence by creating a private right of action.** The Federal Election Commission (FEC), in conjunction with the DOJ, is statutorily charged with enforcing U.S. campaign finance laws, but more often than not refuses to do so—particularly when allegations of misconduct are raised against candidates running for president. Their consistent lack of action invites corruption and gives candidates a green light to violate campaign finance laws with impunity—a threat that is particularly concerning when a candidate illegally accepts money from authoritarian governments seeking to influence American policy. To counter this intransigence without risking additional presidential abuse, Congress should follow the model in place for

environmental and labor law violations and amend the Federal Election Campaign Act's private right of action to let parties sue to enforce campaign finance laws whenever the FEC fails to bring an enforcement within a specified period of time after notice by the complainant.

- **Shore up our laws and regulations governing foreign influence on our government.** Authoritarian governments routinely use—and abuse—our country's complex and loophole-filled disclosure regime to influence American foreign policy to their benefit. In addition to direct influence through monetary investments, these governments cultivate webs of policy influencers who trade on their names, titles or ability to direct donations to pressure current government officials. Congress needs to shore up our country's defenses against these campaigns. Specifically, Congress should pass legislation creating a permanent ban on senior executive branch officials and members of Congress from representing authoritarian governments after leaving government. Congress should also extend the cooling off period for any foreign lobbying and close loopholes in the Foreign Agent Registration Act and in the law's disclosure system, including by expanding the role of civil enforcement in ensuring compliance.

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- Lydia Dennett, [Comparing Current Foreign Influence Reform Legislation](#), POGO (2018).
- [Hearing on the DISCLOSE Act Before the S. Comm. on Rules and Admin.](#), 117th Cong. (2022) (statement of Daniel I. Weiner, Director of Elections and Government, Brennan Center for Justice at NYU School of Law).
- Rebecca Jacobs & Robert Maguire, [Trump made up to \\$160 million from foreign countries as president](#), CREW (2023).
- [Combating Foreign Interference](#), Campaign Legal Center (last visited July 2, 2024).

#### Examples of legislation to implement these proposals:

- [H.R. 11/S. 1](#), Freedom to Vote Act (118th Congress)
- [H.R. 5314/S. 2921](#), Protecting Our Democracy Act (117th Congress)
- [H.R. 9623/S. 5315](#), Anti-Corruption and Public Integrity Act (117th Congress)
- [H.R. 5122](#), FARM Act (116th Congress)
- [H.R. 1118/S. 512](#), DISCLOSE Act (118th Congress)
- [S. 2563](#), ILLICIT CASH Act (116th Congress)
- [S. 434](#), PAID Off Act (118th Congress)
- [H.R. 5525](#), ENABLERS Act (117th Congress)
- [S. 3137](#), Foreign Extortion Prevention Act (118th Congress)
- [H.R. 3229](#), Stop Foreign Funds in Election Act (118th Congress)

# Ensuring the right to vote and the peaceful transition of power



**The rising specter of authoritarianism threatens all of our democratic institutions, including those integral to voting and elections. From subtle [manipulation of electoral systems](#) to bold assaults on the peaceful transfer of power, authoritarian tendencies threaten the very foundation of our democracy. As we prepare for the challenges ahead, we must focus squarely on safeguarding electoral integrity and ensuring the smooth transition of presidential authority.**

At the forefront of our battle lies the integrity of the electoral process itself, extending beyond the physical infrastructure of elections and seeping into the digital domain where disinformation and misinformation campaigns are [rampant](#). In this age of [AI-influenced](#) public discourse, we have to confront these multifaceted threats, from [fabricated robocalls](#) to [manipulated images](#) aimed at influencing voters and distorting the truth. These instances underscore the pressing need for proactive legislation to address the intersection of AI and elections.

In this era of disinformation, the rejection of legitimate electoral results has emerged as a serious [threat](#), [fueled](#) by former President Donald Trump's refusal to accept the 2020 election results. But Trump is not alone in this refusal. Couy Griffin, a New Mexico county commissioner, cited [baseless](#)

[allegations](#) of election fraud in his refusal to certify primary election results. He was subsequently removed from his public office pursuant to Section 3 of the 14th Amendment to the Constitution for engaging in the January 6th insurrection at the Capitol. Although election certification is a [ministerial duty](#), meaning that elections officials have no discretion under the law in refusing to certify election results, some are ignoring that mandate and pointing to policy disagreements as a reason not to certify. In North Carolina, for example, Board of Elections members cited their state's lack of a photo ID requirement for voting as their reason not to certify, [saying](#), "We feel the election was held according to the law that we have, but that the law is not right." The fact that election officials feel emboldened to ignore the law and reject electoral results simply because they disagree is chilling.

In addition to concerns that elections officials may try to manipulate the certification process for undemocratic ends, transitions of presidential power now face deep uncertainty. Following the tumultuous and ultimately violent transition after the 2020 election, a [survey](#) gauged public sentiment on presidential transfers of power and revealed a significant degree of uncertainty among Americans regarding the potential peaceful transition to a new president in 2024. [The January 6th](#) insurrection, which disrupted the peaceful transition of power, is embedded into our country's consciousness and underscored the fragility of the peaceful transfer of authority in this country.

Simultaneously, the erosion of voting rights, exemplified by the gutting of the [Voting Rights Act \(VRA\)](#), demands urgent redress. The [Supreme Court](#) and [state legislatures](#) have worked hand in glove to chip away at the protections afforded by the VRA, necessitating the enactment of vital legislation at the national level like the [Freedom to Vote Act](#) and the [John R. Lewis Voting Advancement Act](#). Furthermore, the [practice](#) of [gerrymandering](#) threatens the very essence of fair representation. [Recent](#) efforts at the state level to restrict access to redistricting materials including congressional map drawing, meeting minutes and other documents relating to the redistricting process highlight the urgent need to simultaneously combat gerrymandering and enhance public access to this information. Simultaneously, millions of people, primarily people of color, who reside in the District of Columbia and Puerto Rico, continue to be disenfranchised.

As we confront authoritarianism, it is incumbent upon us to protect not only the mechanisms of democracy but also the administrators who uphold its integrity and are the backbone of our elections. Election workers, often unsung heroes of the democratic process, require robust protections and adequate resources to perform their essential duties. Amid increasing [attacks](#)—both physical altercations and doxxing attempts—the safety and security of poll workers is of immense [concern](#). Election officials are adopting a more [proactive stance](#), aimed not only at protecting election workers but also educating voters, refuting misinformation and holding accountable those seeking to disrupt the democratic process.

In today's political arena, leaders with anti-democratic leanings are actively exploiting electoral laws and institutions to bolster their control, curtail political diversity and foster an unfair electoral advantage through tactics like gerrymandering, voter coercion and other forms of electoral manipulation and corruption. Their growing refusal to accept election outcomes is exacerbating an already volatile situation, fueling heightened political polarization, social unrest and violence. This troubling state of affairs underscores the need to safeguard our electoral processes and defend the principles of democracy.

- **Pass transformative voting rights legislation like the Freedom to Vote Act and John R. Lewis Voting Rights Advancement Act.** Since the Supreme Court destroyed the preclearance provisions in Section 4 of the Voting Rights Act in its disastrous 2013 decision [Shelby County v. Holder](#), states have dramatically increased their efforts to pass restrictive voting rights laws that limit voter participation, disproportionately harming marginalized communities. This is happening at the same time that the U.S. Court of Appeals for the 8th Circuit is making Section 2 of the VRA, which empowers private individuals to challenge racially discriminatory voting practices or procedures, like racial gerrymandering, much harder to enforce. This attack on marginalized communities' fundamental right to vote is a travesty. It's therefore critical that Congress prioritize passing legislation like the [Freedom to Vote Act](#) and [John R. Lewis Voting Rights Advancement Act](#), which would safeguard voters from discrimination based on race, establish minimum standards to ensure all voters can participate in fair and open elections, support election workers, correct the corrosive impact of dark money and make clear that interference with—and intimidation of—officials who are tabulating, canvassing and certifying election results is a federal crime.
- **Implement ranked choice voting for elections.** Our current electoral system generally leads to only the two major-party candidates in a general election having a realistic chance at winning. Breaking this two-party duopoly and giving voters the ability to more accurately express their political preferences could help limit the influence of candidates with authoritarian tendencies who manage to seize the nomination of one of the two main political parties. One proven way to do that is through [ranked choice voting \(RCV\)](#). RCV [empowers voters](#) by enabling them to [rank candidates](#) according to their preferences. This transformative approach guarantees that every ballot carries weight, even if a voter's initial choice fails to secure victory. Several states have implemented RCV voting in some capacity, including [Alaska](#), which conducted its first RCV election in 2022 where voters elected [moderates](#) from both parties that more accurately reflected the state's political diversity. States should pass legislation [creating](#) ranked choice voting in their states, and Congress should enact the [Voter Choice Act](#) to aid state and local governments in transitioning to this voting method.
- **Enfranchise millions of people by admitting Washington D.C. and Puerto Rico as states.** Large segments of the United States population, disproportionately people of color, remain legally disenfranchised by state and federal governments in direct contradiction to the promise of democracy. Although the 23rd Amendment grants citizens of the District of Columbia the right to vote for the president, they lack voting representation in Congress. Meanwhile, American citizens in Puerto Rico, Guam and the U.S. Virgin Islands cannot vote for president or members of Congress. The District of Columbia has already completed the steps typically required for admitting new states, including passing a [referendum](#) supporting statehood and passing a state [constitution](#). Similarly, Puerto Rico [passed](#) a referendum in 2020 supporting statehood and is [scheduled](#) to hold another plebiscite in November 2024. Congress should immediately admit D.C. as a state and admit Puerto Rico as a state if the island votes to become a state in November.
- **Guarantee paid time off for voting.** The unfortunate reality is that [many people](#) cannot afford to take unpaid time off from work to participate in the electoral process. This is particularly problematic for communities of color, who are disproportionately [hourly workers](#), and who experience [exacerbated](#) challenges at polling stations, where [longer](#) wait

times force them to choose between their income and exercising their right to vote. This barrier to democratic engagement highlights the need for policies and laws that mandate paid time off for voting. There is currently no federal mandate for employers to provide paid time off for voting. It is time for Congress to pass the [Time Off to Vote Act](#), ensuring employees nationwide receive at least two hours of paid leave for federal elections, a move that several [states](#) and [companies](#) have already taken.

- **Protect election workers and election places.** Political attacks on our electoral system are taking a toll on local election officials. During the 2020 and 2022 electoral cycles, election personnel experienced an increase in threats and intimidation, with over [a third](#) of election workers reporting experiencing threats and harassment. These threats, [fueled](#) by individuals denying the outcome of the 2020 presidential election, are [prompting](#) a wave of poll worker and election official resignations. While some states have taken [steps](#) to protect election workers and election places, including Maine's [requirement](#) for election workers to undergo de-escalation training, and [Arizona](#) and [California's](#) inclusion of election officials in address confidentiality programs, a more unified and comprehensive legislative framework is needed. State and federal governments must immediately bolster financial resources for physical security at polling places and security training for all election workers. We must also protect election workers by creating additional civil and criminal penalties, including criminalizing acts of intimidation or harassment against election workers, and prohibiting the weaponization of personal data to intimidate and harass individuals through doxxing. Similar [legislative efforts](#) to protect election workers have recently passed in states such as Connecticut and Nevada. Congress and other states must follow suit.
- **Prevent authoritarian actors from refusing to certify free and fair elections.** Until recently, election certification went largely unnoticed and unchallenged. During the 2020 and 2022 elections, however, some partisan actors refused to certify state and local elections, causing chaos and uncertainty, thereby furthering the distrust in our elections. In the lead up to the 2024 elections, [Georgia](#) changed the certification rules, and potentially laid the groundwork for local officials refusing to certify an election whose outcome they don't like. States must step in to prevent authoritarian actors from weaponizing the certification process in violation of state and federal law. Where necessary, states should amend their laws to reinforce that election officials have a non-discretionary duty to certify election results and that questions about alleged fraud or error in election returns are to be resolved outside of the certification process, typically in the courts. States should create statutory frameworks that permit voters and appropriate state officials to bring legal challenges against state officials who refuse to certify. Colorado's [proactive approach](#) to election certification, which permits the secretary of state to step in and review and certify results if a county canvass board misses its certification deadline, is a model other states should replicate. Moreover, those who attempt to obstruct this process can face severe [penalties](#) under Colorado law.
- **Ensure that contracts for voting equipment and software only go to companies with a commitment to upholding democracy.** Companies that supply voting equipment play a crucial role in our democracy. If these companies, and their equipment, are not trusted, conspiracy theories can quickly proliferate, a pattern we witnessed first-hand in the aftermath of the 2020 elections. Contracts for voting equipment and software should



therefore only go to companies who meet certain democracy benchmarks, including disclosing their corporate giving, not accepting foreign funding, passing a security risk and vulnerability assessment and a commitment to supporting whomever legitimately wins the election.

- **Establish independent redistricting commissions to combat gerrymandering.** Gerrymandering [exacerbates](#) the historical marginalization of certain segments of the population, particularly communities of color, by [manipulating](#) district boundaries to diminish voters' influence, thereby perpetuating a cycle of racial disenfranchisement. In [most](#) states, the responsibility for drawing congressional districts rests with the legislature, a process susceptible to exploitation by self-interested political actors of both parties. In order to limit the ability of anti-democratic politicians to skew congressional results, states should [establish Independent Redistricting Commissions](#) (IRCs). [Arizona](#) and [Michigan](#) stand as examples of states with IRCs, which effectively removed politicians from their involvement in drawing district boundaries. IRCs ensure that congressional districts are drawn based on objective criteria, such as prohibiting districts drawn to benefit a specific political party and adhering to guidelines set forth in the Constitution and Voting Rights Act, thereby restoring trust and giving voters a stronger voice in the electoral process.
- **Legislatively guarantee access to records related to drawing congressional maps.** In South Carolina, a court recently [allowed](#) a racially gerrymandered congressional map to persist through the 2024 elections—despite the court's previous determination that the map was deliberately drawn to favor certain racial groups. Drawing congressional boundaries is a complex task that is susceptible to outside forces seeking to weaponize it in service of their own partisan aims. Enacting state laws that grant public access to redistricting materials such as meeting transcripts, map drafting records and related communications can [shed light](#) on efforts by anti-democratic forces to manipulate the redistricting process including if there is any discriminatory intent behind redistricting decisions. North Carolina's 2023 state [budget](#) put the state's voters [in the dark](#) by drastically reducing public access to lawmakers' drafts or other materials guiding their redistricting decisions. Without access to these materials, challenging gerrymandered maps is exceedingly difficult. States should pass laws mandating public disclosure of and access to all materials related to the redistricting process.
- **Prevent AI-fueled misinformation from undermining our elections.** It's not hard to imagine how authoritarian regimes or political candidates could exploit artificial intelligence technologies to manipulate elections and suppress dissent. We have already seen how AI has been used to [create misleading deepfakes](#) and [suppress voting](#). As this technology continues to progress, we must take urgent steps, both through legislation and through executive actions, to prevent disinformation and deepfakes from compromising our elections. Building on the federal prohibition against candidates or their agents fraudulently misrepresenting themselves as speaking or acting for or on behalf of another candidate or political party, the Federal Election Commission (FEC) [should](#) conduct a [rulemaking](#) clarifying that the criminal prohibition against "fraudulent misrepresentation" applies to deliberately misleading campaign advertisements generated using AI. Congress should also pass legislation explicitly giving both the FEC and Federal Communications Commission roles regulating AI in campaigns. Additionally, both Congress and [state governments](#) should enact measures such as the [AI Transparency in Elections Act](#) to

require disclaimers on political advertisements generated with AI and consider legislation that would address [AI-powered voter suppression](#).

- **Reform the ascertainment process.** Donald Trump and his allies' attempt to subvert the 2020 election exposed the [vulnerability](#) of our democracy during presidential transitions. Following a presidential election, the General Services Administration (GSA) is charged with [ascertaining](#) the winner, which officially starts the process of the peaceful transition of presidential power including by disbursing federal funds for the Office of the President Elect. In 2020, GSA Administrator Emily Murphy [delayed ascertainment](#) until November 23, depriving the incoming administration of access to congressionally appropriated funds and the ability to consult with government experts on urgent matters including combating the [COVID-19](#) pandemic. In response to this vulnerability, Congress passed [legislation](#) in 2022 clarifying elements of the ascertainment process and creating a 5-day deadline, after which both candidates will be provided equitable funds until ascertainment occurs. To further safeguard against partisan manipulation of this process, the Government Accountability Office should conduct a review of the ascertainment process and propose recommendations to enhance it. Moreover, Congress should pass legislation prohibiting a political appointee from overseeing the ascertainment process.
- **Ensure transparent and effective presidential transitions to prevent the weaponization of that process.** Presidential transitions pose unique challenges in maintaining control of classified information, preserving public records and ensuring transparency in the use of public funds. According to the National Archives and Records Administration, every administration since the 1980s has [mishandled classified documents](#). Accordingly, President Biden [launched](#) the Presidential Records Transition Task Force in February 2024 to explore best practices to control classified information during a change in administration. Congress should [amend](#) the Presidential Records Act to provide meaningful enforcement mechanisms and make clear that nothing in the Act exempts the president from federal criminal laws restricting the disclosure of classified information.

## RESOURCES:

- [Pathways To Progress Report](#), Declaration for American Democracy Coalition (2023).
- [CREW submits statement to Congress on protecting American democracy](#), CREW (2022).
- [Hearing on The Elements of Presidential Transitions Before the House Committee on Oversight and Reform Subcommittee on Government Operations](#), 116th Cong. (2020) (Statement of Donald K. Sherman, Deputy Director, Citizens for Responsibility and Ethics in Washington).
- [Open The Government Coalition to Congress: Fix the Presidential Records Act](#), POGO (2023).
- Diamond Brown, [North Carolina's new budget puts voters in the dark](#), CREW (2023).
- Alex Tausanovitch & Danielle Root, [How Partisan Gerrymandering Limits Voting Rights](#), Center for American Progress (2020).
- Gowri Ramachandran et al., [Intimidation of State and Local Officeholders](#), Brennan Center for Justice (2024).
- [Ranked Choice Voting](#), Fair Vote (last visited July 3, 2024).
- Mekela Panditharatne, [Preparing to Fight AI-Backed Voter Suppression](#), Brennan Center for Justice (2024).

**Examples of legislation to implement these proposals:**

- [H.R. 11/S. 1](#), Freedom to Vote Act (118th Congress)
- [H.R. 14/S. 4](#), John R. Lewis Voting Rights Advancement Act (118th Congress)
- [S. 3313](#), Voter Choice Act (118th Congress)
- [H.R. 51](#), Washington, D.C. Admission Act (118th Congress)
- [H.R. 1552](#), Puerto Rico Statehood Admission Act (117th Congress)
- [H.R. 7489](#), Time Off to Vote Act (117th Congress)
- [S. 2770](#), Protect Elections from Deceptive AI Act (118th Congress)
- [S. 3875](#), AI Transparency in Elections Act of 2024 (118th Congress)
- [S. 3654](#), Agency Preparation for Transitions Act (118th Congress)
- [S. 3897](#), Preparing Election Administrators for AI Act (118th Congress)
- [H.R. 1653](#), PAST Act (118th Congress)

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