



DECLARATION FOR
**AMERICAN
DEMOCRACY**

Executive Actions in Detail

Introduction

Earlier this year the Declaration for American Democracy (DFAD) coalition published a memo detailing a series of executive actions and other steps that President Biden and his Administration could take to help protect and improve our democracy. Those actions, all of which would help build a thriving democracy, remain important, and we call on the Administration to address each one.

In this memorandum, we expand on several recommendations that we believe to be the most important steps the President can unilaterally take to bolster our democracy's defenses and proactively strengthen our country's commitment to civil rights. Each of these bold, but practical, actions would strengthen different areas of our democracy, from increasing transparency in how our government spends its money, to protecting the right to vote and fighting corruption.

The memo presents and discusses five critical actions that the Administration should take now to strengthen our democratic institutions. They are:

No. 1 | **Require government contractors to disclose their political expenditures**

No. 2 | **Direct the Department of Justice to create a high-profile task force to protect voting rights**

No. 3 | **Direct the Department of Justice to use its various new tools to fight the influence of corrupt and/or illegal money on our democracy**

No. 4 | **Restrict the expansion of executive power over spending authorities and leadership vacancies**

No. 5 | **Enhance transparency at the Department of Justice's Office of Legal Counsel**

Critical Executive Actions in Detail

No. 1 | **Require government contractors to disclose their political expenditures**

Recommendation: The president should issue an executive order requiring that contractors that receive taxpayer funds for federal projects over 1 million dollars disclose any secret money contributions to third-party political groups over a specific dollar amount in the two years prior to submitting the bid. The rule should cover companies, major stakeholders, all beneficial owners, and all subsidiaries of the companies awarded the contract.

Discussion: Federal contractors are legally prohibited from donating money to candidates for office and to political parties. It's not difficult to see why: contractors should not be able to buy future contracts from the people who will eventually occupy the halls of power. However, the Supreme Court's decision in *Citizens United v. FEC* opened the door for contractors to abuse a loophole in the law to funnel money into opaque entities like 501(c)(4) organizations that are allowed to use their funds to influence elections.

Investigations have demonstrated that major federal contractors are prolific campaign spenders. For instance, a recent report showed that PACs associated with the ten largest federal contractors spent \$24.8 million during the 2020 election cycle. Those ten contractors alone received \$213.8 billion in federal money in 2020, almost one-third of the total amount received by all federal contractors that same year.

These reports are based on PAC disclosure reports and thus don't include any money that contractors invested in 501(c)(4) entities. As a result, we have little to no idea how much money these contractors--and the many lower-level recipients of federal funds--have invested through these more opaque vehicles.

Contractors' current opaque political spending creates the impression that the government is operating under a patronage system rather than a merit-based system, causing the American people to question whether the government is using their money to line the pockets of political leaders rather than improve the lives of those who elected them.

While the President is unable to unilaterally close the loophole in our election laws that allows third parties to invest an unlimited amount of opaque money, the President is able to stop federal contractors from making use of that loophole. Requiring contractors that receive over \$1 million from the government to disclose all their contributions to third party groups over a specific dollar amount in the two years prior to submitting a bid would give the public a better sense of the extent to which contractors try to influence the democracy they serve. And, that information could in turn help Congress grasp the breadth of the problem and encourage people to lobby for legislation to close the dark money loophole.

No. 2 | **Direct the Department of Justice to create a high-profile task force to protect voting rights**

Recommendation: The president should direct the DOJ to create a task force focused on ensuring the integrity of all future elections. This task force should designate one DOJ attorney as a point-person for every state, as well as Washington, D.C. and federal territories. The designee should actively monitor any attempts by in-state parties to suppress voters or sabotage the election – and recommend necessary legal actions to appropriate DOJ officials. One chief objective of this task force would be to send a clear public message to all stakeholders, as well as the media, that attacks on election integrity will not be permitted. The task force, in conjunction with appropriate DOJ officials, could also publicly enumerate the range of existing statutory and other authorities that give DOJ broad latitude to protect election integrity.

Discussion: In our previous memo, we called on the Biden Administration to develop a DOJ election protection and integrity task force to help protect voting rights during the November 2022 election. We strongly believe that this policy should be implemented to protect all elections—from the 2023 off-cycle elections to the 2024 election and beyond.

The November 2022 election demonstrated the urgent need for more action to protect our democracy from the anti-democratic forces arrayed against it as paramilitary forces intimidated voters and attempted to influence and interfere in the casting of legitimate ballots. Perhaps nowhere was this as clear as in Maricopa County in Arizona where Trump supporters and Trump-aligned groups stood outside drop box locations and “filmed and photographed voters” while “accusing [them] of being mule[s].”

These anti-democratic “poll watchers” developed plans to show up en masse on Election Day, promising to “observe, record on their phones, and in general let both voters and election workers know that they’re being monitored.” This has intimidated voters and helped lead to a mass exodus of election workers, many of whom have fled over fears for their lives. And, with so many election positions now open, these same anti-democratic voices have called on supporters to “tak[e] over the election apparatus”.

These paramilitary and vigilante forces were inspired by the very people who tried to discredit and overturn the 2020 election. For example, Cleta Mitchell, a lawyer who was part of the Trump legal team that fought to overturn the 2020 election, appeared on Steve Bannon’s podcast to call on Trump supporters to join her “Army of Patriots” to “observe” polling places. Bannon, a former Trump Administration official who was convicted of contempt of Congress and sentenced to four months in prison for obstructing Congress’s investigation into the January 6th attack on the Capitol, called Mitchell’s request a “call to arms”.

A dedicated election and voter protection team, run from the DOJ with liaisons in each state, would be a major boost to local and national efforts to protect the right to vote. This task force would help local and state election officials track violations of voter intimidation laws, help protect election workers from threats on their lives, and help election protection organizations in their legal battles against the people trying to undermine democracy. President Biden can take steps right now to develop a federal program to protect voters and election workers.

No. 3 | **Direct the Department of Justice to use its various new tools to fight the influence of corrupt and/or illegal money on our democracy**

Recommendations: In our previous memo, we made two policy recommendations related to the Administration's new authority to investigate and stop the flow of illegal and corrupt money into our democracy. They are:

- **Direct the Justice Department to establish an interagency working group to determine the extent to which foreign entities influence our elections via U.S. corporations (including shell corporations) and political nonprofit organizations, and make recommendations to stop this inappropriate influence.**

Recommendation: The president should direct the Justice Department to work with the Federal Election Commission, the Department of The Treasury, and other relevant agencies to: (1) determine the frequency and amount of foreign money being spent directly or indirectly in connection with U.S. elections, and (2) issue recommendations to help prevent political spending by U.S. corporations ((including shell corporations) that are controlled by foreign entities or have an appreciable amount of foreign ownership.

- **Direct the DOJ to develop capabilities to use the new corporate beneficial ownership registry to combat the influence of corrupt or illegal money on our democracy.**

Recommendation: The president should direct the Department of Justice to expand its capabilities to track and prosecute the beneficial owners of corporations that try to illegally influence our democracy. The new beneficial ownership registry, created by the Corporate Transparency Act, was primarily designed as a mechanism to fight money laundering, but it can also be used to support any other law enforcement priority. With that in mind, the president should ensure that the DOJ focuses on preparing its public integrity section and all other relevant departments to use the new database to prevent attacks on our democracy.

Discussion: The United States is one of the world's worst jurisdictions for financial secrecy and dirty money, as our deeply broken legal regime has allowed bad actors to shelter and move billions of dollars of corruptly-sourced cash in and through the U.S. financial system. This dirty money has made its way into our communities and our elections, with foreign dark money buying influence and exacting favorable policy.

Over the past few years however, Congress has passed several laws to rebuild our country's anti-corruption regime. These laws, including the Corporate Transparency Act (CTA), provide the Administration with new legal authorities they can use to unearth the ultimate beneficial owners of most U.S. legal entities. We are thankful that the Biden Administration has already begun the rulemaking process to implement these new authorities provided for under the CTA. These are important steps in the fight against corruption--a fight that, as the Administration has stated, is a core priority to protect our national security and defend our democracy. Fighting corruption helps renew the public's faith that the government works for them.

But rulemaking is only one way the Administration can use these authorities to protect our democracy. We know, for example, that foreign-owned American corporations have been used to illegally influence our elections. However, while there is a lot of research into the impact of corrupt and illicit money on our economy, there is currently very little insight into the extent to which foreign or otherwise corrupt or illegal money is making its way into our elections. For that reason, we encourage you to direct the DOJ and the FEC to use their authorities to determine the extent to which foreign and corrupt actors are making use of shell companies to invest their money directly into our elections, or into opaque 501(c)(4) organizations. Following this critical study, the DOJ should issue public recommendations on how to prevent these bad actors from influencing our politics. Additionally, the DOJ should determine the extent to which its preexisting authority allows it to track and combat these bad actors--and whether it needs additional authorities from Congress.

The President should also direct the DOJ's public integrity and civil rights divisions to prepare agency guidance documents, in-person trainings, and other resources on how to successfully use the CTA's new beneficial ownership registry to track and fight illicit actors as they try to undermine our democracy. There are many very recent examples of the importance of beneficial ownership information in fighting corruption, including the United Kingdom's successful sanctions on various Russian oligarchs that impacted all their "entities and subsidiaries" in the UK. But in the United States, a recent Government Accountability Office report found that deficiencies in the DOJ's annual statistical report to FinCen are hampering the effectiveness of new anti-money laundering regulations.

That's why these preparations should specifically include fixes to these current deficiencies and internal guidance documents about how to request beneficial ownership information from the Financial Crimes Enforcement Network (FinCEN). As we explained, while the CTA was mainly designed as a mechanism to fight money laundering, its beneficial ownership registry can be used for any law enforcement priority. This registry, when it comes online in the next few years, could become a crucial resource for the Department in its fight against corruption. The President should ensure that the Department's sections dedicated to protecting our democracy from corruption and from internal and external threats to our voting and civil rights are prepared to use their new authorities.

No. 4 | **Restrict the expansion of executive power over spending authorities and leadership vacancies**

Recommendations: In our previous memo, we made two recommendations related to the expansion of executive power that undermine Congress's authority over two critical processes. They are:

- **Set new guardrails to curb potential future abuse of spending authorities.**

Recommendation: The president should issue guidance implementing the appropriations language mandating apportionment transparency on an ongoing basis and notifying agencies of their obligations to report potential impoundments to Congress. The executive order should also include requirements to report potential violations of the Impoundment Control Act, to be more responsive to congressional and GAO inquiries, and, as we have previously recommended, to make OLC opinions on appropriations and budget issues publicly available.

- **Restrict abuse of leadership vacancies.**

Recommendation: Issue guidance to agencies on qualifications for acting officials and order agencies to report to GAO when acting officials are installed or replaced. These changes would discourage placing unqualified individuals in important leadership positions and would give the public and Congress clearer oversight tools to ensure the administration is being clear about who is running the federal agencies, as well as respecting the Senate's constitutional role to provide advice and consent, and adhering to the limits on temporary appointments under the Vacancies Act.

Discussion: In drafting the Constitution, the Framers built checks and balances into the foundation of our democracy to ensure that the people were the ultimate authority throughout the government. Vesting Congress with the power to make funding decisions—the “power of the purse”—is a critical component of that founding principle. Congress has crafted longstanding, foundational laws to protect its authority like the Antideficiency Act (ADA) and the Impoundment Control Act (ICA) to prevent federal agencies from misusing federal funds.

Another important check on executive authority included in the Constitution is the requirement that the Senate provide advice and consent before the president can select someone to serve in high office. As Alexander Hamilton explained in Federalist 76, advice and consent is a “check upon a spirit of favoritism in the President, and would tend greatly to prevent the appointment of unfit characters”. The power of advice and consent is absolute--the President cannot unilaterally appoint people to positions of power.

Unfortunately, we have seen that a motivated executive branch can violate many of these laws and reject Congress's constitutional prerogatives in pursuit of its own political gain. For example, the Trump administration routinely abused the Federal Vacancies Reform Act (FVRA). The law is meant to give the executive flexibility to ensure that federal agencies are not left leaderless if an appointee leaves government service, however the statute has been badly abused to instead place unqualified, partisan officials in positions of power, sidestepping the Senate at every turn. President Trump and his administration also supplanted Congress's power of the purse by manipulating the executive's responsibility to allocate the funds provided by Congress.

This abuse of executive power was part of President Trump's attempt to extort political favors from the president of Ukraine by delaying key military support for the embattled nation.

While we believe that Congress should expeditiously pass additional legislation to address these glaring flaws in the legal regime, your administration can take a number of steps independently that would immediately help repair the damage from the previous administration.

Specifically, you can improve transparency into the apportionment of appropriated funds. Although the Biden Administration has created a new, congressionally mandated website featuring apportionment documents, that website is not user-friendly. To date, apportionment decisions largely have been made in the dark, with little oversight from Congress or the public. This opacity helped enable the Trump Administration's attempt to use federal funds to extort a foreign government. The Biden Administration can issue an executive order improving the searchability of the current website, notifying agencies of their obligations to report potential impoundments to Congress, and directing OMB to make public information about any funds that have not yet been released and that will expire in 90 days or less. An executive order also can direct agencies to respond expeditiously to spending-related oversight requests from Congress and the Government Accountability Office and call for the Justice Department's Office of Legal Counsel to release opinions that guide agencies on budget and appropriations law.

The Biden administration can also discourage future abuse of the FVRA by issuing guidance to agencies for selecting acting officials in compliance with the letter and spirit of the law, including relying on senior career and Senate confirmed appointees currently serving at an agency to fill a vacancy, and clarifying that vacancies created by terminations are subject to the FVRA. Additionally, there is little transparency regarding when some of these acting officials are installed or replaced. The administration should expeditiously implement recently-passed legislation to make public when acting officials are installed or replaced. This will help set a clear date for when an acting official is installed-- thus beginning the countdown to the deadline for a new official's ultimate confirmation by the Senate. Such a change would give Congress and the public clearer oversight tools to know who is running federal agencies. Together, these modest changes would help bolster the Senate's constitutional role of providing advice and consent.



No. 5 | **Enhance transparency at the Department of Justice's Office of Legal Counsel**

Recommendation: The President should work with the Attorney General to direct the Department of Justice's Office of Legal Counsel (OLC) to publicly publish all unclassified final opinions and publish an unclassified summary of any final opinion that cannot be published in full to protect properly classified information. The Attorney General should also conduct a public review of all OLC opinions that implicate separation of powers issues, and withdraw any opinions that risk serious executive branch overreach or substantially hinder oversight of the executive branch. The review and its results, including all withdrawn opinions, should be made publicly available.

Discussion: Although for decades the OLC toiled in relative obscurity providing legal advice to the White House and executive branch agencies, in the 21st century its role has expanded dramatically with the office issuing consequential opinions on issues ranging from torture to Congressional oversight and the constitutionality of drone strikes on American citizens. As a result, it has evolved into a powerful executive branch agency, operating with little accountability and even less transparency. Most of the office's opinions are not available to the general public and rarely are they reviewed by a court of law. Although historically the OLC opinions have been thought of as advisory, it has become clear that the White House and federal agencies believe that they are legally bound by them. For example, Special Counsel Robert Mueller felt bound by a decade-old OLC opinion that sitting presidents were immune from criminal prosecution.

We encourage the President to work with the Attorney General to direct OLC to publish all unclassified opinions in an online, machine-readable database. The database should also include summaries of all final opinions that cannot be released in full. The public has a right to know how their government operates. Shining light into one of the most opaque and powerful agencies in the entire executive branch will rebuild public confidence that the government actually does operate with the consent of the governed.

Additionally, the Attorney General should order a public review of all OLC opinions that relate to separation of powers concerns, and withdraw any opinions that allow serious executive branch overreach or substantially hinder oversight of the executive branch. The Trump Administration's dislike for separation of powers resulted in extraordinary and successful attempts to stymie Congressional oversight—including by ignoring duly issued subpoenas and attempts to enforce Congress's constitutional power to investigate the president as part of impeachment proceedings. Congressional oversight is a critical component of a functioning democracy: it is how the people's representatives ensure that the executive branch is using its power to serve the people. Congress, not the executive, is the people's voice in government. OLC has helped the executive usurp many of the powers of the legislature. It is crucial that the DOJ take bold but necessary steps to return some of that power to the people's representatives. While we agree with, and respect, the firewall this administration is observing between the President and prosecutorial decision making at the Department of Justice no such firewall should prevent the President from issuing a directive such as this around this critical transparency.

Conclusion

Our coalition's mission is to protect and strengthen American democracy, to ensure that all of our institutions serve the people, and to build a thriving democratic system where all who want to participate are able to make their voices heard. Over the years we have witnessed the deterioration of our institutions as anti-democratic forces continue to mobilize in numbers and power. We have seen Congress fail, time and again, to pass the transformative democracy protection legislation that this moment demands. We still believe that legislation--from the For the People Act to the John Lewis Freedom to Vote Act--is desperately needed.

No executive action will fill the legal gaps that have been created by the forces who wish to undermine our republic. But taken together, these executive actions can strengthen our democracy and begin to rebuild faith in our institutions. To be clear: no single action can achieve this goal, and we still recommend that the administration implements all of the recommendations in our previous memorandum. The policies that we have outlined here are simply some of the most important steps that the President can take, right now, to fight for our democracy. These policies would help fight corruption in our government and in our elections, help protect the people's right to vote, and they would help rebuild faith in their government by increasing transparency in the executive branch. We have reached a pivotal juncture in our fight to build a fully inclusive, thriving democracy. People are increasingly losing confidence in our institutions, fueling a democratic decline that must be resisted. The Administration must act--and our coalition stands ready and willing to support you in this fight.



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