



Executive Actions

to Protect and Strengthen Our Democracy

We have reached a pivotal juncture in our country's long journey toward a fully inclusive democracy. Congress's failure to pass the transformational reforms in the Freedom to Vote: John R. Lewis Act ("FTV Act") in January of 2022 left our elections vulnerable to threats on multiple fronts. It remains essential that Congress pass vital pro-democracy measures, and explore new ways to bring bipartisan support to that effort. But because we cannot overstate the importance of democratic protections to every issue that we care about, we cannot stand still. President Biden must now take the lead with immediate, decisive actions to bolster our democracy's defenses and proactively strengthen our country's commitment to civil rights. This memorandum recommends a series of bold, but practical, actions. We encourage the administration to review and implement them promptly.

Executive Summary

This memorandum is divided into two general sections: the **first** section reiterates and asks for status checks on a number of recommendations that we made in previous memoranda to the Biden administration. The **second** section features new suggested actions that the administration could take to strengthen democracy and the integrity of our government.

Addressing previous recommendations. In 2021, we laid out a series of commitments that we encouraged the administration to take to promote democratic renewal in the United States. Below, we have laid out what we see as the most critical actions that we recommended given the changed landscape. We know the administration has taken some tangible steps towards these goals, and we hope they will build on that work with additional proactive steps towards implementing these actions, and we ask for a report on the status of this process.

New actions to protect our democracy and strengthen the integrity of our institutions of government. We have developed a series of recommended actions in light of the failure to pass the FTV Act. These actions are practical and bold, and will, in combination with the actions we recommended last year, help begin the process of restoring faith in our government and our institutions, protecting the integrity of our elections and the people's right to participate in our democracy, and defending our republic from the inside out.

The recommendations are divided into four separate categories: **protecting and strengthening our elections; justice, equity, and the rule of law; building an ethical and accountable government; and combating corruption.**

Our coalition's mission is to transform our fragile democracy into a strong democratic system that reflects, responds to, and represents the people. No single reform or single issue area can achieve this, and certainly no president can do this alone. However, the president does have the power to make important changes and take powerful steps that can help protect and strengthen our democracy and rebuild public trust in our government. This memorandum is designed to lay out a roadmap for the administration to follow as it continues to work towards democratic renewal.



Status of DFAD's Outstanding Recommendations

In 2021, DFAD presented the administration with a memorandum outlining a number of crucial actions that the president could take to combat authoritarianism, fight corruption, and advance the fight for human rights. We briefly outline each recommendation below and request that the administration provide us with a report on the progress the administration has made towards implementing each policy.

The administration has already taken one important step in issuing the March 2021 Executive Order 14019 Promoting Access to Voting. This is an important action with significant potential to strengthen our elections and our democracy, and we commend the administration for taking it on. However, the power of EO 14019 hinges on its implementation, and thus far federal agencies have failed to take full advantage of the potential of the EO. Agency plans to date, as shared via public fact sheets, mostly revolve around putting information on websites and sending letters encouraging third parties to voluntarily provide voting and registration information. These types of passive activities do not generally translate into eligible voters added to the registration rolls. Instead, we need federal agencies to provide actual voter registration services to eligible Americans they serve, everywhere possible. The threats to the project of building a multiracial, inclusive democracy have not been greater in recent times, and the urgency for the administration and federal agencies to do everything within their power to confront those threats, before it is too late, is greater than ever. We urge you to continue to work with the federal agencies—especially those serving communities too often left out of our elections—to craft additional plans that meet the urgency of this moment.



Protecting and Strengthening our Elections

Make federal cybersecurity expertise usable for state and local election officials

The president should direct the National Institute of Standards and Technology, in conjunction with established election security experts, to develop voluntary cybersecurity guidelines for election infrastructure and other election-related systems.

Direct the Justice Department 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

The president should direct the Justice Department to work with the Federal Election Commission 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.

Respond to shortcomings of the Foreign Agents Registration Act in detecting potential foreign influence in our democracy

The president should ensure that DOJ's FARA Unit has sufficient resources to handle its considerable responsibilities by directing DOJ to triple staff the FARA enforcement unit. Also, since FARA may not have fully revealed past foreign advocacy or lobbying, the president should ensure that all potential executive and judicial nominees fully disclose any and all previous paid activities on behalf of foreign interests during the vetting process, without regard for whether those activities triggered a FARA disclosure obligation, so that questions of influence can be considered.



Create a blue ribbon commission to recommend nominees for the Federal Election Commission (FEC) who are committed to the agency's mission

The president should issue an executive order establishing an advisory panel to prepare a list of potential candidates for the FEC, with instructions to only advance candidates who are committed to the rigorous, even-handed enforcement of campaign finance laws. At a minimum, the advisory panel should include Democrats, Republicans, and independents, and people with diverse racial, gender, ethnic, and professional backgrounds (including campaign finance and election law experts). The president should commit to making the panel's recommendations public, giving them great weight, and providing a written explanation for any decision to depart from them.

Justice, Equity, and the Rule of Law

Transparency of prosecutorial discretion at the Department of Justice

The president should direct the Department of Justice to craft and publish written guidance detailing under what general circumstances it will hear pre-charge appeals regarding prosecutorial decisions, the process that will be followed, criteria for reversing prosecutorial decisions, and other relevant information. The president should also direct the DOJ to publish data annually on the frequency of instances in which Main Justice has reviewed prosecutorial decisions at the request of defense counsel and the outcome of those reviews.



Building an Ethical and Accountable Government

Establish a public, annual cabinet level meeting on ethics and ethics reform

The president should establish a public, annual cabinet level meeting on ethics and ethics reform. During this meeting, high-level officials should be required to report on their agencies' implementation of ethics requirements over the past year, as well as actions the agency is committed to taking over the coming year.

Publish agency visitor logs

The president should build off of the policy currently in place within the White House and require agencies to log and publicly report, on a regular basis, information related to meetings and engagement between agency officials and non-governmental persons and entities. These public logs should provide at least: 1) the names and affiliations of all meeting attendees, 2) the name of any entity they represent, 3) the date and time of the meeting, 4) a brief and accurate description of what was discussed, and 5) electronic copies of any materials relevant to the matter discussed that were left behind.

Establish baselines and require disclosures for public companies' internal decision making regarding political spending

Given the massive increase in such spending since the Citizens United decision, the president should advise the Securities and Exchange Commission to take steps to protect shareholders and the broader financial system from these risks by establishing baseline procedures and requiring disclosure of how public companies make decisions about political expenditures, how much they are giving, and how much they are spending on lobbying activities.

Disclose and reassess Office of Legal Counsel opinions

The president should direct 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 president should also direct the Attorney General to conduct a public review of all OLC opinions that implicate separation of powers issues, and to 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.



Combating Corruption

Require government contractors to disclose their political expenditures to non-profits, trade associations, and others that play in politics after being awarded a contract and certify that disclosure with the office of procurement.

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.

Establish a People’s Lobbyist Office

The president should build on the impressive Modernizing Regulations Executive Order and establish an independent, central body within the executive branch that functions as a “regulatory capture referee” or a “people’s lobbyist office,” to ensure that the rulemaking process is not captured by corporate interests.

Combat the traditional revolving door

Although President Biden’s Executive Order on Ethics Commitments by Executive Branch Personnel took some actions to combat the revolving door, more can be done. The president should prohibit all appointees from lobbying their former executive branch departments or agencies for a period of 5 years after leaving government service; and from lobbying certain executive branch officials for the remainder of the Administration. The president should prohibit very senior appointees from lobbying any part of the executive branch or Congress for a period of at least 2 years after leaving government service. For all cooling off periods, the term lobbying should be defined to include lobbying activities and strategic consulting, not just lobbying contacts.

The president should also require officials leaving government service to enter into binding revolving door exit plans laying out the steps the official will take to ensure compliance with applicable post-employment restrictions. Former officials should also be required to submit exit plan compliance reports periodically after leaving government service. These exit plans and compliance reports should be filed with the Office of Government Ethics and made available to the public.



Combat the reverse revolving door

The president should expand existing conflicts of interest requirements by prohibiting all appointees, for a period of two years after appointment, from participating personally and substantially in any particular matter in which the appointee's former employer or client has a financial interest.

The president should also prevent individuals with significant conflicts of interest from being appointed to senior level positions in the executive branch in the first place. To do this, the Office of Government Ethics should be given the authority to conduct a screening process and recommend against proposed appointees for senior level positions if their employment backgrounds and/or current private sector activities would give rise to conflicts of interest requiring recusal so frequently as to significantly impair their ability to perform their official duties.

DFAD's 2022 Recommendations

We have also developed a number of new proposed executive actions that expand and build upon our previous recommendations. Each new proposal represents an important step in the fight to protect our democracy and foster equity and social justice in our country. We encourage the president to advance these policies. In doing so, the administration will make it clear that it has not abandoned the fight for democratic renewal despite the setbacks we have suffered. The fight to protect our democracy and bolster the country's commitment to social justice and equity against a growing authoritarian movement has just begun. The administration has many powerful tools in its arsenal, including all the policies we have laid out in this memorandum--we encourage you to use them.



Protecting and Strengthening Our Elections

Create a White House Office of Democracy

Create an office within the White House focused on advancing the administration's efforts to protect and strengthen democratic systems and civic participation. The office would coordinate across the federal government, and with state and local governments, to identify opportunities to increase civic participation among the American people through executive authority, legislation, budgets, strategic communications, and community partnerships.

Take steps to address prison-based gerrymandering

The president should direct the Bureau of Prisons and the Census Bureau to develop an action plan to address the problems associated with prison-based gerrymandering. Specifically, the president should direct the Census Bureau to revise its usual residence rule to count incarcerated people at their last known address--rather than in the prison where they are incarcerated--for census purposes.

Reform OLC's internal practices and standards to ensure it provides an objective view of the law.

The president should direct the attorney general to oversee an update to the OLC's best-practices procedures to include verifying the factual predicates of proposed executive actions and ensuring that counter arguments are adequately addressed. The Justice Department should then rigorously hold OLC attorneys accountable to those higher best-practice standards. Taking these steps would improve the quality of OLC's legal analysis and reduce opportunities to abuse the office's authority.

Direct the Department of Justice to create a high-profile task force to help protect voting rights and election integrity – with dedicated liaisons for each state.

The president should direct the DOJ to create a task force focused on ensuring the integrity of the November 2022 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.



Building an Ethical and Accountable Government

Publicly post final submissions of ethics records.

The president should direct the Office of Government Ethics to establish a centralized ethics records database on OGE's public-facing website, which would be embedded in an ethics.gov site. The database should proactively include records that are currently available to the public upon request under the Freedom of Information Act or the Ethics in Government Act. This initiative would significantly increase transparency and improve public understanding of our executive branch ethics framework, thereby strengthening confidence in government by highlighting the structured mechanisms of the ethics program.

Release evidence of and officially acknowledge human and civil rights violations by past administrations.

The president should direct the creation of an independent process for reviewing allegations of human and civil rights violations by previous administrations, including in cases where there are lawsuits pending. The federal government should be transparent about previous abuse allegations. Establishing such a process will help future administrations review allegations of human and civil rights violations perpetrated by the government.

Curb abuse of spending authorities

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

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 in law under the Vacancies Act.



Combating Corruption

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

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.

Implementing these strategies can help to strengthen our democracy and continue our commitment to an inclusive, secure, fair and accessible electoral system.

