



**On Democracy and
Authoritarianism:
The Present State of
American Affairs**

Featuring a new essay by
Steven Levitsky and Daniel Ziblatt,
authors of *How Democracies Die*

“In a democracy, the people are the ultimate check on power. Protect Democracy’s central argument is that institutions don’t protect themselves; people have to be activated to use the tools the system provides. In a timely metaphor, the group’s leaders compare authoritarianism to a virus sweeping the globe: first you treat the patient by activating the body’s immune system to fight off the illness; over time, you formulate a vaccine to provide immunity in the future.”

— Molly Ball, National Political Correspondent, *Time Magazine*

A wooden door with a window. The window is divided into two panes. The left pane shows a Christmas tree with lights and a red and white striped skirt. The right pane shows a snow globe with a white, fluffy object inside. The door has a brass handle and a lock.

Mission

Protect Democracy
formed in late 2016 to
prevent American
democracy from declining
into a more authoritarian
form of government.

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Preface

Preface

Friends of democracy,

Four and a half years ago, when a group of former White House and Department of Justice officials considered launching an organization to protect democracy, we debated how to describe its mission.

We recognized that unlike the kinds of good government challenges we'd faced in recent years, the threat now looming was different in kind, not degree, and we wanted to make that clear.

But when we drafted our mission statement—to *prevent American democracy from declining into a more authoritarian form of government*—there were questions as to whether we should really use that “A-word.” Some worried we'd be seen as alarmist, or worse: hysterical; others worried it might alienate people we hoped to persuade.

But even considering those objections, we decided we should use that word for two reasons. First, the word was being used on the fringes of political discourse at the time to describe the developing situation and we thought having a group of former high-level government officials name it would help move it towards the center of our national conversation. And second, we thought it was the most accurate description of the threat.

Sadly, that latter reason has proven true. We leave it to others to judge to what degree explicitly naming the danger

four years ago—and making the case to others—sounded the right level of alarm, and whether that contributed in any way to our country surviving an autocrat in the Oval Office.

But from those earliest days, we knew the danger would outlast one president's term. Because the danger does not stem from any one individual; it stems from an illness in our body politic, an illness that has afflicted democracy around the world, and that is getting worse.

So while we need to be proud of our victories to date, we know the harder challenges still lie ahead.

We can't afford to turn away from this problem, or let down our guard. But it is important that we take stock of what worked to get us here, so we can draw on that for the fights ahead.

To do that, we wanted to create a document that informs about the state of our democracy, gets us smarter about the past, and thereby makes us smarter for the future. In short, to borrow from a great American tradition, we wanted to create a political pamphlet that could be shared to help illuminate, as Thomas Paine once wrote, “the present state of American affairs.”

So we invited some people with extensive experience with democracy and authoritarianism to offer their analysis. This pamphlet opens with a new essay

from two members of our Board of Advisers, Steven Levitsky and Daniel Ziblatt, the authors of *How Democracies Die*, on how they see the current state of the fight for democracy. It closes with thoughts from Cecilia Muñoz, former Director of the White House Domestic Policy Council, on why that fight is worth waging. In between, we tell what we hope is an informative story of what our nation just survived and the role Protect Democracy played, and where we need to go from here.

Along with the publishing of this pamphlet, Steven, Daniel, and Cecilia have kicked off a [symposium we're hosting](#) on the grand strategy for stopping authoritarianism in the United States. So this pamphlet is not an end, but a beginning.

We hope in the spirit of the best political pamphlets, that this is one we all feel compelled to share, to debate, and to react to. As the more of us there are who deeply understand and engage with what's happening, what's at stake, and what we can do, the more likely we are to ensure democracy survives.

— Ian Bassin and Justin Florence, Protect Democracy Co-Founders, July 4, 2021





How Democracy Could Die in 2024, and How to Save It

by Steven Levitsky and Daniel Ziblatt

How Democracy Could Die in 2024, and How to Save It

This essay first appeared in [The Atlantic](#).

The greatest threat to American democracy today is the possibility of a stolen presidential election. As we argued in our [2018 book](#), contemporary democracies die often at the ballot box through measures that are nominally constitutional. As horrific as the January 6 assault on the Capitol was, American democracy is unlikely to fall victim to a violent insurrection. Rather than extremist militias overrunning the Capitol, we should primarily be alert to mainstream Republicans “legally” overturning elections.

The threat to democracy in the U.S. today is worse than we anticipated when we wrote *How Democracies Die*. We knew Donald Trump was an authoritarian figure, and we held the Republican Party responsible for abdicating its role as democratic gatekeeper. But we did not consider the Republicans to be an anti-democratic party.

Four years later, however, the bulk of the Republican Party is behaving in an anti-democratic manner, and could very well overturn a presidential election. This scenario would represent a lethal “heart attack” for American democracy. And just like responding to an actual heart attack, it requires that we address both the acute crisis and underlying longer-term conditions that give rise to it. Working on these two fronts simultaneously are the two central tasks facing defenders of American democracy today.

Surviving the short-term threats to elections

For the first time in U.S. history, a sitting president refused to accept defeat and attempted to overturn the election results. But rather than oppose this attempted presidential coup, leading Republicans either cooperated with it or enabled it by refusing to publicly acknowledge Trump’s defeat. Leading Republicans also refused to break with the forces behind the January 6 assault on the Capitol. In the run-up to January 6, most of them refused to denounce extremist groups, which were spreading conspiracy theories, calling for armed insurrection and assassinations, and were ultimately implicated in the insurrection. Few Republicans broke with Trump after his incitement of the insurrection, and those who did were censured by their state parties.

Between November 2020 and January 2021, then, a significant portion of the Republican Party refused to unambiguously accept electoral defeat, eschew violence, or break with extremist groups—the three principles that define pro-democracy parties. Based on this behavior, as well as the GOP’s behavior over the last six months, we are convinced that the Republican Party leadership is willing to overturn an election. Moreover, we are concerned that it will be *able* to do so—legally.

As we argued in *How Democracies Die*, our constitutional system relies heavily on forbearance. Whether it is the filibuster, funding the government, impeachment, or judicial nominations, our system of checks and balances works when politicians on both sides of the aisle deploy their institutional prerogatives with restraint. In other words, they do not engage in constitutional hardball, or deploy the letter of the law in ways that subvert the spirit of the law. When contemporary democracies die, they usually do so via constitutional hardball. Democracy's primary assailants today are not generals or armed revolutionaries, but rather politicians—Chavez, Putin, Orban, Erdogan—who eviscerate democracy's substance behind a carefully-crafted veneer of legality and constitutionality.

How Democracies Die pointed to a troubling rise in constitutional hardball in the U.S., *even before the rise of Trump*. An example was Senate Republicans' 2016 decision not to allow President Obama to fill the Supreme Court vacancy created by Justice Antonin Scalia's death. The move was entirely legal, but in practice it amounted to stealing a Supreme Court seat. This is precisely what could happen in the 2024 election.

Electoral hardball can be devastating to a democracy. Elections require forbearance. For elections to be democratic, all adult citizens must be equally able to cast a ballot and have that vote count. It is strikingly easy to use the letter of the law to violate the spirit of this principle. Election officials can legally throw out large numbers of ballots based on the most minor of technicalities in the voting process (e.g., the oval on the ballot is not entirely penciled in or there is a typo or spelling mistake in the mail in ballot

form). Large-scale ballot disqualification may accord with the written letter of the law, but it is inherently anti-democratic, for it denies suffrage to a large number of voters. And crucially, if hardball criteria are applied unevenly, such that many ballots are disqualified in one party's stronghold but not in other areas, it can turn an election.

Republican officials across the country are laying the legal infrastructure to engage in electoral hardball. Since January, according to [Protect Democracy, Law Forward, and the States United Democracy Center](#), Republicans have introduced 216 bills (in 41 states) aimed at facilitating hardball tactics. As of June 2021, 24 of these bills have passed, including in the battleground states of Arizona, Florida, Georgia, and Texas. The approved measures allow Republican-controlled state legislatures or election boards to sideline or override local election administrations in Democratic strongholds. This would allow state legislatures or their appointees to meddle in local decision making, purge voter rolls, and manipulate the number and location of polling places. It would also allow Republicans in Arizona, Georgia, and elsewhere to do something Trump tried and failed to do in 2020: throw out ballots in rival strongholds in order to overturn a statewide result. Finally, the new laws impose criminal penalties for local election officials deemed to violate election procedure. This will enable statewide Republican officials to compel local officials to engage in electoral hardball via threats of criminal prosecution. Throwing out thousands of ballots in rival strongholds may be profoundly anti-democratic, but it is technically legal, and Republicans in several states now have a powerful stick to enforce such practices.

Republican politicians learned several things in the aftermath of the 2020 elections. First, they learned that our electoral system creates a plethora of opportunities for constitutional hardball—legal steps that can be used to overturn unfavorable election results. Trump failed at this in 2020, due to sheer incompetence, but his campaign to overturn the results revealed a variety of mechanisms that may be exploited in future elections. These cannot be unlearned. The soft underbelly of American democracy has been exposed. Second, Republicans learned that they would not be punished by their voters for attempting to steal an election. To the contrary, they learned that efforts to overturn an election would be *rewarded* by Republican voters, activists, local and state parties, and many donors.

The 2020 election may, in effect, have been a dress rehearsal for what is to come. All evidence suggests that if the 2024 election is close, the Republicans will deploy constitutional hardball to challenge or overturn the results in various battleground states. Recent history and public-opinion polling tell us that the Republican activist base will enthusiastically support—indeed, demand—electoral hardball tactics. And the new state election laws will facilitate them. Democratic strongholds in Republican-led battleground states—such as Arizona, Georgia, Texas, and possibly Michigan and Wisconsin—will be especially vulnerable. And if disputed state-level elections throw the election into the House of Representatives, it is likely that a Republican-led House would hand the election to the Republican candidate (no matter who actually won the election).

It is useful to compare this process to the evolution of the Supreme Court nomination process. Prior to 2016, it was

almost unthinkable that an opposition-controlled Senate would simply refuse to allow the president to fill a Supreme Court seat. Indeed, nothing of the sort had occurred since 1866. And yet Republicans, secure in the knowledge that their behavior was legal, did the unthinkable: they stole a Supreme Court seat. Because the move was constitutional, there was nothing Democrats could do about it. A similar process could unfold around the 2024 election. Based on the GOP's behavior since 2016, but especially since November 2020, there is every reason to think that Republicans are now willing to use constitutional hardball to overturn an election. And since the move would likely be deemed constitutional, there is likely nothing that Democrats would be able to do about it.

In sum, the absence of formal guardrails governing American elections leaves our democracy vulnerable to abuse. The system has faced crises before—including the disputed elections in 1824 and 1876. Given the considerable authority granted to state legislatures by the Constitution, the processes of voting, vote counting, and even the selection of electors can easily be subverted for partisan ends. It is thus critical that the electoral guardrails be hardened through federal legislation *prior* to the 2024 election.

To save democracy, democratize it

Beyond the acute crisis facing American democracy, however, there is a deeper problem: the radicalization of the Republican Party. Unless and until the GOP recommits itself to playing by democratic rules of the game, American democracy will remain at

risk. Each national election will feel like a national emergency. Therefore, the de-radicalization of the Republican Party is a central task for the next decade.

Normally, in a two-party democracy, if one party veers off course, it is punished at the ballot box. Electoral competition is thought to be a natural corrective for political extremism: parties that stray too far from the positions of the average voter lose votes, which compels them to moderate and broaden their appeal to win again. Like a professional sports team, when you lose, you fire the coach, acquire new players, and regroup. The same should hold for political parties. Indeed, if you ask moderate or NeverTrump Republicans what will get Republicans back on course, they will almost invariably answer “devastating electoral defeat.”

They may be right. There is a hitch, however: competition’s effects are currently being undermined in the U.S. today by what political scientists call counter-majoritarian institutions.

We believe that the U.S. Constitution, as currently designed, is enabling the radicalization of the Republican Party and exacerbating America’s democratic crisis. Key countermajoritarian features of the U.S. Constitution, such as the Electoral College and the U.S. Senate, have long been biased toward sparsely populated territories. This is not new. But given that Democrats are increasingly the party of densely populated areas and Republicans dominate sparsely populated areas, this long-standing rural bias in our constitution now allows the Republican Party to win the presidency, control Congress, and pack the Supreme Court *without winning electoral majorities*. Consider these facts:

- Republicans have won the popular vote for the presidency only once since 1988 and yet have governed the country for nearly half of that period.
- Democrats and Republicans each control 50 seats in the U.S. Senate, even though Democratic Senators represent 40 million more voters than Republican Senators.
- The most recent three appointees on the U.S. Supreme Court were appointed by a president who did not win the popular vote—and were confirmed by a Senate leadership not representing a majority of Americans.

Counter-majoritarian institutions increasingly shield Republicans from genuine competition. By allowing Republicans to win power without national majorities, this system of “Constitutional welfare” allows the GOP to pursue the kinds of extremist strategies that currently threaten our democracy without suffering devastating electoral consequences. A solid majority of Americans opposes most of the Republicans’ current positions. But if we do not reform our democracy to allow majorities to speak, it is naïve to expect them to change course.

Americans tend to view counter-majoritarian institutions as essential to liberal democracy. And some of them are. In the United States, the Bill of Rights and judicial review help ensure that individual liberties and minority rights are protected under majority rule. But many of our counter-majoritarian representative institutions are legacies of a pre-democratic era. Most established democracies were born with 18th and 19th century institutions such as unelected or unrepresentative upper chambers, electoral colleges, filibuster-like mechanisms,

and unequal voting rights based on literacy or property ownership. Over time, however, other Western societies jettisoned most of these pre-democratic legacies. In Britain, the House of Lords was dramatically weakened in 1911 and then reformed again in the 1990s. Costa Rica, Denmark, and Sweden eliminated their traditional upper chambers in 1949, 1953, and 1970, respectively. Chile, Brazil, and Argentina eliminated their electoral colleges, leaving the U.S. as the world's only presidential democracy without direct elections. Likewise, few other democracies maintain filibuster-like arrangements that allow minority parties to block legislation. Only South Korea has a filibuster-like rule, but it can only be used to delay, not block, legislation—and it is rarely employed. America has thus become an outlier, holding onto pre-democratic institutions that other established democracies have abandoned.

To save our democracy, we must democratize it. A political system that repeatedly allows a minority party to control the most powerful offices in the country cannot remain legitimate for long. We need to inject more majoritarianism into our democracy. Following the example of other democracies, we must expand access to the ballot, reform our electoral system to ensure that majorities win elections, and weaken or eliminate antiquated institutions such as the filibuster so that majorities can actually govern. While Congress is considering limited democratizing reforms, such as banning legislative gerrymandering, these pale compared to the scale of the problem.

Serious constitutional reform may seem like a daunting task in our present climate, but Americans have re-founded our democracy before. After the Civil War

and during the Progressive Era, political leaders, under pressure from organized citizens, remade our democracy. Always unfinished, our Constitution requires continuous updating. American democracy thrived in the 20th century because it allowed itself to be reformed.

Given the scale of the threat, reforming our democracy over the next decade is among the most pressing challenges we face today.





**Our Democracy
is in Danger**

Our Democracy is in Danger

For the first time since the Civil War, a violent insurrection prevented the United States from holding a peaceful transfer of power. A white supremacist mob, urged on by a sitting President and carrying confederate flags, stormed the Capitol, forced Congress to halt the counting of Electoral College votes, and left nine dead. And even after that, 147 Members of Congress voted not to certify an election that was unquestionably free and fair.

Two months later, roughly two thirds of Republicans approved of the way Donald Trump handled the events of January 6. And while according to a Morning Consult study American right-wingers are significantly more likely to have authoritarian tendencies than either the American left or the right in other comparable countries, overall support for democracy has been eroding in the United States across parties. Whereas only one in sixteen Americans expressed openness to the idea of military rule thirty years ago, today, that number is roughly one in five. That during a period in which the federal executive has grown ever more powerful, and the more representative legislature has been hollowed out and rendered dysfunctional in many ways. According to the Economist Intelligence Unit, the quality of U.S. democracy has declined for the past fifteen years. And support for democracy is weakest among younger Americans.

Younger Americans' openness to non-democratic forms of government should also serve as a warning that the anti-democratic and illiberal forces currently

**Around the world,
democracy is in recession,
and authoritarianism
is on the rise.**

emanating most dangerously from the right could one day come from the left. To be sure, there are illiberal strains present in today's left, just nowhere near as powerful or extreme as the ones on the right. But historically and internationally, attacks on democracy have come from left and right, and we need to remain vigilant that the same could one day happen here.

What we're seeing in the U.S. is consistent with a troubling trend around the world. According to Freedom House's annual measure of the state of democracy globally, 2021 marked fifteen years of democratic decline. Around the world, democracy is in recession and authoritarianism is on the rise.

The pandemic only worsened this trend: since the beginning of the outbreak and the ensuing lockdowns, democracy and human rights conditions have worsened in 80 countries. According to the research organization V-Dem, the number of non-democratic countries now outnumber the number of democratic countries for the first time in twenty years. And the percentage of the world's population living under democratic regimes has sunk to the lowest point since 1991.

These global trends impacting the entire democratic world, when combined with our own governance structures and history of white supremacy, have resulted in an amplification of the power of an anti-democratic, illiberal, and bigoted faction in American society that has always existed.



Every attempt to interfere with the proper outcome of the election was defeated... But it's massively important for the country to understand that it didn't happen accidentally. The system didn't work magically. Democracy is not self-executing.

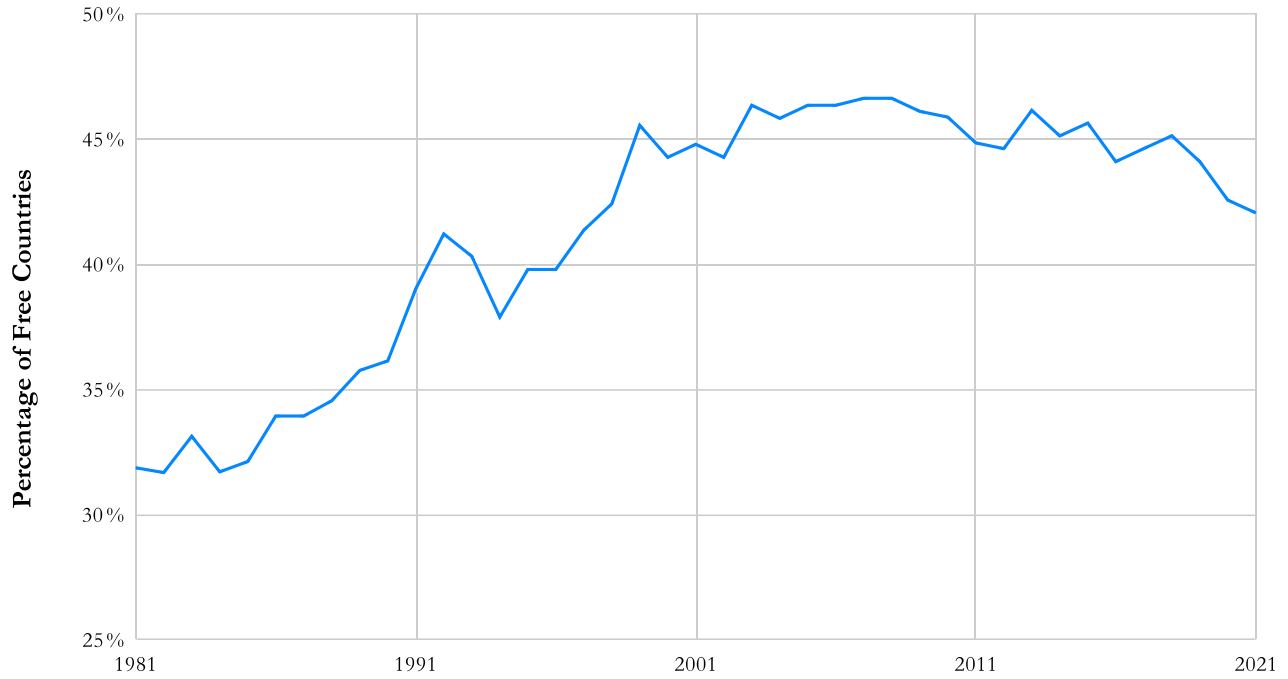
— Ian Bassin, Protect Democracy Co-Founder and Executive Director

That faction, first through Trump's presidency and now through the political party it has largely captured, is deploying the same six-step authoritarian playbook that illiberal movements from Turkey to Hungary, Venezuela to Poland have used in recent years to dismantle democracies: (1) politicize independent institutions; (2) spread disinformation; (3) aggrandize executive power and undermine checks and balances; (4) quash dissent; (5) delegitimize vulnerable populations; and (6) corrupt elections.

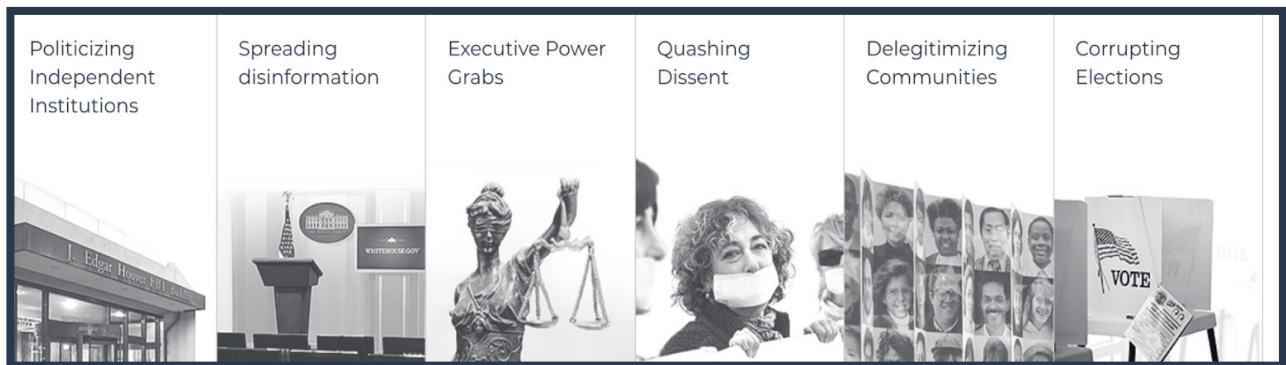
It took extraordinary efforts for our democracy to survive the past four years. In the words of *Time Magazine* journalist Molly Ball, those efforts were the result of "an unprecedented, creative and determined campaign whose success also reveals how close the nation came to disaster." And as our Executive Director notes, "Every attempt to interfere with the proper outcome of the election was defeated... But it's massively important for the country to understand that it didn't happen accidentally. The system didn't work magically. Democracy is not self-executing."

History teaches that once autocrats achieve power, it's not easy to dislodge them. As a nation, we succeeded in doing that by ensuring that the aspects of our system designed to prevent tyranny actually did so, but the authoritarian movement in this country is growing, and learning from its past failures so as not to repeat them. Unless we meet that faction with an even more powerful coalition of those on the left and right who believe in democracy, the next time we might not be so fortunate.

Fifteen Years of Global Democratic Recession



According to Freedom House’s annual measure of the state of democracy globally, democratic conditions have continued to either decline from or fail to return to pre-2006 levels; in other words, global democracy is entering its fifteenth year of recession. Data from Freedom House’s “Freedom in the World 2021.”



The six step authoritarian playbook used by illiberal leaders around the globe.



**What We've
Built to Respond
to the Threat**

What We've Built to Respond to the Threat

In late 2016, recognizing that the global wave of authoritarianism that had marked the early days of the 21st Century had landed on the United States' shores, we formed Protect Democracy with an explicit mission: *to prevent American democracy from declining into a more authoritarian form of government.*

From our earliest days, we recognized that as much as having an autocrat in the White House posed an acute and immediate danger that required forceful

and urgent action, Donald Trump was a symptom—not cause—of the authoritarian movement. We understood that the threat of authoritarianism would outlast his presidency.

And we believed confronting and defeating it would require a generational effort that would evolve and shift over time. Therefore, we set out to build the strongest organizational foundation we could, recognizing that we'd need to deploy different tools and strategies at



As has been noted in the pages of *The Atlantic*, the global rise of authoritarianism has in many ways been a war on women and the feminist gains of the past several decades. So when Protect Democracy was just a concept on paper in late 2016, our network placed a bet on its importance and ability to deliver, and it turned out to be one of the best bets we've ever placed. We could not be prouder to be one of Protect Democracy's founding donors.

— Donna Hall, President and CEO, Women Donors Network

different moments. In short, we believed that if we built a good company, it would make good products. In this case, the products being strategic interventions to protect democracy.

To do this, we have assembled a full-time staff of more than 70 best-in-the-business professionals who have served under both Democrats and Republicans, including lawyers, policy experts, legislative advocates, media strategists, data analysts, and technologists. This group includes:

- More than 15 staff who have served in high-level positions in the federal executive, including the White House;
- More than 10 staff who have served as high-level aides to Congressional offices from both parties;
- More than 16 staff who have clerked on the federal courts;
- More than 12 staff who have served in high-level political campaign roles;
- Three staff with PhDs ranging from electrical engineering (machine learning) to international democracy promotion;
- More than 15 staff who have served in the senior ranks of other leading nonprofit, political, or media organizations, including for some of the world's leading international democracy development organizations; and
- A group of outside expert advisers that includes some of the world's leading experts on democracy, authoritarianism, and the institutions of American democracy.



[Protect Democracy is] the most important guard-dog of democracy's red lines.

— Aziz Huq, Frank and Bernice J. Greenberg
Professor of Law, University of Chicago Law School

Over the past four years, our work helped to prevent the three worst case scenarios of an autocratic presidency:

1. First, [our work helped prevent](#) the autocrat in office, Donald Trump, from rigging our election systems to perpetuate his stay in power indefinitely—as other autocrats have done—to essentially make himself president for life.
2. Second, our work helped stop Trump from placing himself above the law and freeing himself to engage in criminal acts or other violations of law with impunity.
3. Third, our work helped blunt Trump's efforts to abuse the powers of his office to subvert our system of government and of checks and balances.

We discuss all of these and the way we achieved each in depth in the section entitled *Surviving Trump* starting on page 45.

To achieve these outcomes, we frequently worked in partnership with a broad coalition of individuals and organizations, though in many cases also achieved impact directly ourselves.

All of this work came as the culmination of dozens and dozens of actions and strategies over the past four years. For example, we:

- Filed more than 100 legal actions that have produced a swath of victories, including nationwide injunctions of anti-democratic Trump Administration policies, expansions of voting rights protections in federal case law (which we discuss in the case study on page 27), and new stronger legal doctrines against presidential abuses of power.
- Worked with Congressional leadership to craft numerous pieces of critical legislation, often supported by cross-ideological coalitions we have helped assemble. (We discuss the Protecting Our Democracy Act that we worked with House leadership to create in the case study on page 31.)
- Generated more than 1,000 stories in national and local press helping the public understand the threats facing our democracy and the potential solutions, and serving as pressure points for local and federal officials to do the right thing. Letters and statements we have repeatedly organized on behalf of Department of Justice alumni in defense of the rule of law, historians in defense of the impeachment power, political scientists in opposition to the filibuster, and national security experts in support of accountability and institutions have all led and driven multiple national news cycles. Our letters on behalf of DOJ alumni alone generated 138 major media stories.
- We assembled the National Task Force on Election Crises, a 50-member cross-ideological body of some of the nation's leading experts on election administration, voting rights, national security, public health, media and logistics. (We discuss the Task Force in the case study on page 24.)
- And we have built two pieces of software—VoteShield and BallotShield—that are being used by Democratic and Republican Secretaries of State around the country. (We discuss these in the case study on page 19.)

All of this has been made possible not just by recruiting an exceptional and diverse team, but by investing heavily in creating a deliberate culture designed to foster collaboration, innovation, growth and leadership that, along with strong management systems, has produced impact with efficiency.

At a moment when the dangers facing our democracy are existential and a movement to defend our democracy is emerging, Protect Democracy is well-positioned to provide critical national infrastructure to this movement.



Protect Democracy has been a trusted and valuable partner to me as we've confronted unprecedented challenges over the past few years. I look forward to working closely with them as we seek to strengthen our democracy and our nation.

— Representative Adam Schiff, D-CA



I'm hard pressed to think of another organization that formed as accurate and comprehensive a prognosis of the dangers facing our democracy as early as Protect Democracy did, and then executed on it to have as much impact as they did. They are an absolutely essential institution in the broader fight for democracy.

— Joe Goldman, President, Democracy Fund

VoteShield and BallotShield

After it was revealed in 2017 that Russia had made extensive efforts, and in some cases succeeded, in penetrating our election systems the year before, we canvassed the leading election security experts about their gravest concerns regarding election security going forward. All agreed: the danger of an intrusion into state voter registration databases.

Every state maintains a database with the records of every registered voter in the state that forms the foundation for the state's election system. Those seeking to corrupt elections, if they were able to access these databases, could target

the registration data of specific voters or groups of voters and change that data in advance of an election, rendering those voters either unable to vote or making it far more difficult for them to vote. These changes could be hard to detect by the naked eye, despite having an outsized impact on the ability of voters to vote.

For example, as Lisa Monaco, the former Deputy National Security Advisor for Homeland Security and Counterterrorism and current Deputy Attorney General (and someone with whom we consulted when building VoteShield) [told the Senate Intelligence Committee](#):

“One of the things I worried about—and I wasn’t alone in this—is kind of **worst-case scenarios, which would be things like the voter registration databases**. So if you’re a state and local entity and your voter registration database is housed in the secretary of state’s office and it is not encrypted and it’s not backed up, and it says **Lisa Monaco lives at Smith Street and I show up at my [polling place] and they say ‘Well we don’t have Ms. Monaco at Smith Street, we have her at Green Street,’** now there’s difficulty in my voting. And if that were to happen on a large scale, I was worried about confusion at polling places, lack of confidence in the voting system, anger at a large scale in some areas, confusion, distrust.”



These innovative new tools [VoteShield and BallotShield] and the way they're used at the state and local level set a model for monitoring and protecting election data.

— Office of Iowa Secretary of State Paul Pate, 2021
National Association of Secretaries of State IDEAS Award Nomination

That same scenario of a changed address could also result in a voter's mail ballot ending up at the wrong address and never reaching its intended recipient. This was no imaginary concern. The Department of Homeland Security [reported](#) in 2018 that nefarious foreign actors attempted to, and in some cases succeeded in, hacking into the voter registration databases of 21 states in 2016.

But terrifyingly, despite experts sounding the alarm and the demonstrated urgency of the threat, we found that no system existed to publicly monitor these voter databases and ensure there

was no tampering. Existing efforts to protect these systems involved either (a) lobbying state election officials to improve their security systems or (b) reaching out to potentially vulnerable voters and asking them to monitor their own status, which is an obviously insufficient response. Since the voter databases are the most likely and scalable attack vector on our electoral system, we needed a system for protecting them.

To address that threat, we built [VoteShield](#), a data analytics tool created to protect the integrity of American elections by monitoring changes to voter registration databases in each state. By tracking weekly and monthly changes (down to the record level) in publicly available voter databases and using a differencing engine to compare each ingestion to previous ones and historical trends, VoteShield's partnered election administrators and in-house data analysts can identify irregularities that may indicate either malicious interference or administrative error. For example, if a state normally experiences roughly 6,000 address changes per week and has a week with 60,000 changes, or if one jurisdiction has changes that are very different than the rest of the state, or if a disproportionate amount of removals are Black voters (or young voters, or GOP voters, or anyone else), VoteShield triggers an alert.

VoteShield uses multiple anomaly detection methods to flag worrisome anomalies. If the first line of anomaly detection methods identifies an anomaly, both partnered election administrators and our in-house data analysts are

alerted to analyze the anomaly. After this analysis and review, if a credible issue is found, we further escalate with election officials so they can remedy it well before Election Day.

As the COVID-19 pandemic moved many election administrators to expand options to vote absentee or by mail, we identified an additional attack vector on our elections and a corresponding opportunity to leverage VoteShield's core competencies in software development and data analysis to further protect and improve our nation's election systems.

So we launched BallotShield, a software product that tracks changes to absentee ballot requests, submissions, and curing rates in order to ensure timely processing of voter requests. Our goal was to be able to spot issues with voting-by-mail at the jurisdictional, precinct, and even address level that might compromise the integrity of the election, and to provide states with an early warning tool for potential administrative errors in the system for requesting, receiving, and casting absentee ballots so that they can be fixed before any voters are impacted. In piloting BallotShield, we worked directly with the Michigan Secretary of State's office to design, develop, and review the data in their absentee ballot files. We then met with their team on a weekly basis heading into the election to discuss the product, review anomalies, and ensure full integrity in the system.

Over the course of the 2020 election season, VoteShield successfully protected voter registration databases in 19 states. And BallotShield helped ensure that as the nation shifted to a largely vote-by-mail election, the process for requesting, receiving, and submitting absentee

ballots in key states was monitored and given another layer of protection. The Cybersecurity and Infrastructure Security Agency put out a statement calling the November 3 election [the most secure in American history](#), which is a testament to the coalition of organizations dedicated to protecting our election infrastructure.



VoteShield offers an unparalleled external analysis of changes to voter rolls, which ensures that large scale voter registration irregularities are not occurring, and if they were, that we would detect them.

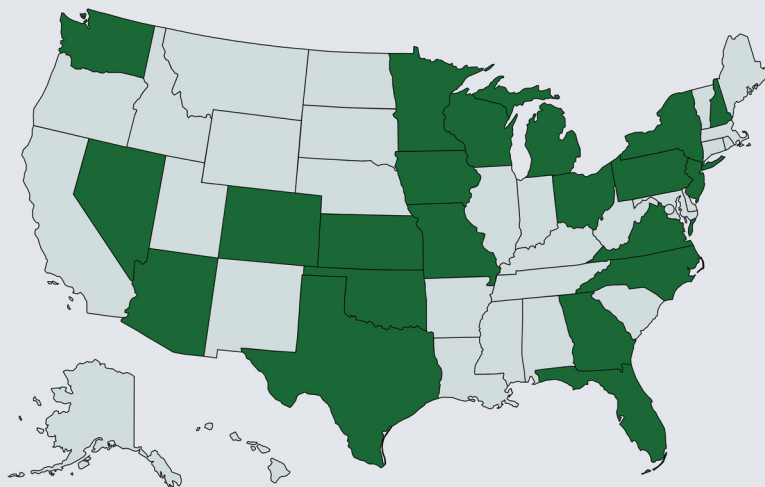
— Jonathan Brater,
Director of the Michigan
Bureau of Elections

VoteShield and BallotShield both helped catch potential problems in the 2020 election in time for them to be fixed. For example:

- When tens of thousands of voters were inadvertently but improperly inactivated in a key swing state, the Secretary of State proactively notified us and indicated that they would work with the jurisdiction to restore those voters' active status as soon as possible, which VoteShield was able to monitor and verify. This state mailed ballots to all active voters, which meant that nearly 100,000 reactivated voters received ballots. A post-election analysis shows that 31 percent of these reactivated voters subsequently cast their vote in the 2020 General Election, with 9 percent of those voters voting by mail with ballots that would not have otherwise been sent to them. For context, the number of reactivated voters nearly equaled the total margin in the presidential election for that state. The reactivated voters had an even more outsized impact on

a local House race, where almost one-third of reactivated voters voted by mail, and again the total number of reactivated voters nearly equaled the margin of victory for that House race.

- Meanwhile, BallotShield identified unusually slow ballot application processing for voters in a major jurisdiction in a swing state. In our weekly call with state election officials, the state director of elections informed us that they had dispatched additional support to assist the local board. As a result, the jurisdiction caught up with the rest of the state; their backlog of unmailed ballots dropped steadily from over 10,000 to nearly 0. We also identified to the state an extremely high rate of ballot rejections for signature issues in another major locale. Again, the state elections team reached out to support the local administrators and the issue was resolved, demonstrating that with sufficient and timely intelligence, better outcomes for voters could be secured. Finally, we applied what we'd learned from BallotShield in the general election to the January 5 run-off in Georgia to ensure the election was secure and functional.



VoteShield currently protects voter files in 21 states with 130+ million voters.

BallotShield tracked 5,725,341 changes to the state's early vote file over 53 days, including 1,358,453 requests for mail ballots. While we spotted a few minor issues, they were all escalated and resolved appropriately.

VoteShield/BallotShield's relationships with officials and key individuals ensure our work has the widest and most direct impact on maintaining election integrity and security. For example, Iowa Secretary of State Paul Pate issued a [press release](#) in 2020 describing how Iowa's First-in-the-Nation partnership with VoteShield/BallotShield helped protect the integrity of Iowa's elections. Secretary Pate has since nominated his partnership with VoteShield/BallotShield [for an award from the National Association of Secretaries of State](#), and we were announced as [finalists](#) for our work together protecting Iowan voters.

When BallotShield identified an extremely high rate of ballot rejections for signature issues in a major jurisdiction, the state elections team reached out to support the local administrators and the issue was resolved.



To learn more about VoteShield's work protecting voter registration databases, [see this video](#).

The National Task Force on Election Crises

As the 2018 midterms approached, our primary concerns (along with many others) revolved around the possibility that Russia might once again try to attack our elections, as they did in 2016. So, late in the cycle, and very informally, we organized a small group of some of the nation's leading election law experts to be ready to speak with a joint voice in the immediate aftermath of the election should Russia succeed in disrupting the election in unprecedented ways for which there was no playbook on how to respond.

Thankfully, the 2018 midterms came and went without a major disruption. But the process made clear to us that if a crisis had emerged, our informal, last minute, small coalition would have been woefully unprepared. American Enterprise Institute scholar Norm Ornstein, who was part of that small group, had warned of just that at the time in a piece in the Washington Post, entitled: "Our elections are wide-open for a constitutional crisis." In the piece, he explained "We have no Plan B... if a national election is disrupted." So in early 2019, we began assembling a more robust and extensive group and effort to prepare for the possibility of a crisis, giving us two years to prepare for the 2020 election.

We called the group the National Task Force on Election Crises. The Task Force became a cross-ideological, cross-sector body of more than 50 trusted experts on election law, election administration, national security, cybersecurity, social media, emergency

response, continuity of government, transfers of power, voting rights, public health, and election protection.

The concept behind the Task Force was for a cross-ideological group of experts to anticipate potential crises and craft best practice responses in advance, behind a veil of ignorance, so that if a crisis did come to pass, the group would have an authoritative basis from which to disseminate clear guidance and recommendations that would carry weight in the chaos, and make it more difficult for a bad actor to take advantage of the confusion.

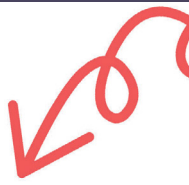
The Task Force began mapping out as many as 65 different potential crisis scenarios in mid-2019, narrowing that down to roughly ten that it invested in building out protocols for responding to by the end of that year. And then a crisis struck: a global pandemic (which had actually been one of the original 65 crisis scenarios, though it had been cut in the winnowing down to ten). As one profile of the Task Force notes, in the words of our Executive Director, in early 2020 "we went from a world with an election crisis possible to one where there is an election crisis."

With the COVID-19 pandemic presenting an actual threat to the ability to run an election, the Task Force launched publicly in March 2020 with a set of recommendations and best practices for how states should ensure safe voting practices in the time of a pandemic, including expanding absentee voting options, curbside voting and early voting,

and how to best communicate to voters changes in electoral procedure.

The Task Force was never focused on which candidate should win the election. Its mission from the start was to prevent and mitigate a range of election crises by calling for critical preventative reforms to our election systems. The only electoral outcomes the Task Force advocated for were free, fair, and safe elections in the United States. Towards that end, the Task Force played a crucial role in protecting the 2020 election by successfully executing a five-pronged strategy:

- **Educating key state and federal election officials and elected leaders** on how to prepare for a range of crisis scenarios, including the potential abuse of provisions in the Electoral Count Act to subvert the election results, which was central to the January 6 insurrection.
- **Briefing key media organizations on potential election crises**, how to accurately cover issues like the “blue shift/red mirage,” and pushing news organizations to plan ahead for how to cover election night, especially under the accurate assumption that a candidate might try to prematurely claim victory. Between October 1, 2020 and January 15, 2021, the Task Force held 18 press briefings for 745 unique attendees, including 333 journalists from 171 different outlets. Many outlets sent multiple journalists: for example, ABC (8), AP (5), LA Times (6), NBC (8), CNN (5), Wall Street Journal (5), Time Magazine (6), Washington Post (9), and USA Today (11).
- **Briefing key tech and media companies**—including Apple News, Google, Facebook, Reddit, Twitter, TikTok, and Snapchat—on how to



VOTERS DECIDE AND WON'T BE PUSHED ASIDE

A state legislature can't overturn the popular vote of their state— it's illegal and unconstitutional.

 NATIONAL TASK FORCE
ON ELECTION CRISES



COUNT EVERY VOTE.

As expected, we won't know the full election results tonight. Waiting for results is hard, but it's more important for our democracy that we get the counting right than get it done right away.

 NATIONAL TASK FORCE
ON ELECTION CRISES

improve their election coverage and respond to election misinformation, leading several companies to set up direct hotlines between their top election security officials and the Task Force.

- **Building a messaging army of hundreds of leaders nationally and in eight key states** to speak as one unified public voice using Task Force-coordinated messaging before and during the crisis, which resulted in unified messaging across various public spheres to “Count Every Vote” while the presidential election was still being determined.

- **Developing and sharing cross-partisan, multifaceted expertise** to build out and disseminate the nonpartisan policy research that underpinned all of the Task Force’s efforts and prepared us to be ready for the crises that would most likely occur.

Following both the 2020 primary and general elections, the Task Force performed after-action autopsies on both and released [policy recommendations](#) for making future elections stronger and more resilient. *The Washington Post* editorial board [endorsed](#) those recommendations as a “good starting point” for reform by the Biden administration and Congress.



The Washington Post

Opinion: Before 2024, we had better fix the election law failings we saw last year

“The needed reckoning should be thoughtful, extensive and ambitious... The National Task Force on Election Crises, a cross-ideological group of more than 50 experts on elections, security, public health and other relevant areas, released a report in January that offers a good starting point.”



Revitalizing the Ku Klux Klan Act to Protect Voters

Frustrated by the federal government's persistent inability to put a stop to white supremacist terrorism by the Ku Klux Klan, Congress passed the Ku Klux Klan Act of 1871 to put an end to the Klan's reign of terror. The bill enacted a comprehensive strategy to respond to the Klan's coordinated political violence and intimidation. The new law included a range of provisions. It gave the president the power to call on the Army, Navy, and militia to respond to local rebellions. It ensured that federal judges could keep Klan conspirators off of juries. And it included a famous provision of American civil rights law, allowing people to sue in federal court when state and local officials violate their federal civil rights (42 U.S.C. § 1983).

The bill also allowed private individuals to bring claims in federal court in response to conspiracies to interfere with civil or political rights. In the language of section 5 of the Act (now codified at 42 U.S.C. § 1985), a federal claim could be brought "if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy." And even more so, individuals could bring a federal case against those who knew about a conspiracy to violate political rights, could have had the power to stop it, and failed to do so.

At the time Congress enacted the Klan Act, these provisions held particular promise for deterring and holding accountable acts of political violence and voter intimidation. At the heart of the Klan's activities were conspiracies to harm Black people and their allies for exercising their political rights. And at a time when many political actors and government officials (including, for example, local law enforcement throughout the South) would regularly turn a blind eye to—or even incite or participate in—these kinds of conspiracies, civil litigation in independent federal courts provided an important tool for ensuring accountability and deterrence to stop this kind of intimidation.

After the bill's passage, President Grant and the Department of Justice set out to break the power of the Klan in the South, and they largely succeeded. Attorney General Amos Ackerman oversaw the arrest and conviction of hundreds of Klansmen, and by 1872–73 the Klan had been effectively crushed. Racist white supremacist terrorism would continue throughout the South, but it wasn't until the Klan's 1915 re-establishment by William J. Simmons that the Klan reemerged as a powerful force in American politics.

With the end of Reconstruction, Klan Act litigation precipitously declined—a trend that accelerated further after the Supreme Court found some (but not all) portions of the Klan Act's criminal enforcement provisions unconstitutional, and Congress repealed at least one other. With the exception of Section 1 of

We filed a suit in 2018 to establish that the same Ku Klux Klan Act that was designed in 1871 to stop efforts of voter intimidation then could also be used to stop analogous, even if digital, efforts now. And we won. The Judge agreed with our legal argument whole cloth.

the Klan Act (§ 1983), the remaining provisions of the Klan Act largely faded into obscurity for over a century.

In particular, Klan Act civil litigation under § 1985 and 1986 for voter intimidation conspiracies was quite rare from 1880–2016. That’s not to say that the provision was never used. Civil rights lawyers occasionally invoked the provision to protect voter registration and demand protection from the Klan and the American Nazi Party. In the late 1970s, a Freedom Rider used it against FBI agents for failing to protect him in the face of known risks of white supremacist violence in Alabama. And in several cases, political entities used it to address conspiracies aimed at interfering with Americans’ abilities to participate in the political process. For example, members of the Democratic National Committee used it to sue the Watergate burglars.

In recent years, we’ve seen new forms of political intimidation and violence, with authoritarian-minded actors conspiring together to prevent full and open participation in the political process. So, over the last four years, Protect Democracy has set out to use the legal tools made available by the Klan Act to combat the alarming trend of increased political violence and conspiracies to intimidate voters, especially voters from communities of color.

In 2017, we filed a case under the Klan Act on behalf of several individuals whose personal, private information was leaked to the world after Russian hackers broke into the DNC’s computer systems. In some cases, our clients’ social security numbers were dumped on the web and their identities stolen as a result. We sued the Trump Campaign on their behalf, alleging that its involvement with Russian actors and others responsible for the hacking and dumping of this private personal information amounted to a conspiracy to punish and intimidate people for engaging in political activity (our clients’ information ended up hacked and online because they were donors to the DNC). The case was ultimately dismissed (for reasons with which we continue to disagree), even though subsequent revelations make even clearer that people within the Trump Campaign at least knew of the Russian hacking and appeared to take steps to try to profit from it politically.

While the case was dismissed, it required a deep dive into the history and application of the Klan Act, and helped Protect Democracy develop knowledge in some of its rarely used provisions—particularly the clause in §1985 described above, which permits federal civil litigation for conspiracies targeting people for their involvement in the political process.

The Klan Act has been used more and more frequently since 2017 in situations core to the reasons it was first enacted. The Act was a powerful response to political violence and voter intimidation in the post-Reconstruction era, and our experience has taught us and others that it can be an important tool for justice and democracy again today.



The cover of “Alien Invasion,” which falsely accused Virginia citizens of voting illegally and put those citizens in harm’s way by revealing personal information like names, addresses, and even Social Security numbers.

In early 2018, we applied this knowledge by filing suit in another matter to vindicate the rights of U.S. citizens in Virginia who had been falsely accused of voting illegally under the mistaken view that they actually were not citizens. These false accusations were part of a report that was published entitled “Alien Invasion” by an organization run by someone with a long history of voter fraud alarmism. The report didn’t just wrongly suggest that Virginians were committing felonies by voting illegally, it also contained their names and addresses (and sometimes even had some folks’ social security numbers). The report made its way online, meaning that the individuals listed in the report had to be afraid that every knock on the door or every call on the phone might be a threat to their safety.

So we sued under the Klan Act. And not just to stop replication of this particular report, but to establish that the same Ku Klux Klan Act that was designed in 1871 to stop efforts of voter intimidation then could also be used in 2018 to stop analogous, even if digital, efforts now. And we won. The Judge—an appointee of President George W. Bush—agreed with our legal argument whole cloth.

Following those two cases, two of the lawyers who worked on them published [a law review article](#) sharing our research, analysis, and demonstrated use cases for the Klan Act in a modern context. One of our Harvard Law School clinic participants published [a note on the topic](#) in the *Harvard Law Review*. We have since shared those articles with other litigators to ensure the lessons we’ve learned can help others further revive the Klan Act in an era of increased political violence and voter intimidation.

And indeed, the Klan Act has been used more and more frequently since in situations core to the reasons it was first enacted. For example, Members of Congress and injured Capitol Police officers have filed Klan Act suits against the alleged perpetrators of the January 6 attacks (we are co-counsel in the latter of those suits). Victims of the “Unite the Right” rally in Charlottesville have used the Act to sue neo-Nazis. New York voters have successfully used the provision to sue two individuals for sending robocalls with false information wrongly suggesting that folks who voted by mail could be subject to warrant checks and credit checks. And just this year, we invoked the Klan Act again in [two suits](#)

over the dangerous incident last Fall in which a caravan of Trump supporters ambushed a Biden-Harris campaign bus on a Texas highway and ran it out of town while calls for help from local law enforcement went unheeded.

Ta-Nehisi Coates has written about how the post-Obama era bears similarities with the era of post-Reconstruction. Sadly, one of those is a rise in political violence and voter intimidation. The Klan Act was a powerful response back then, and our experience has taught us and others that it can be an important tool for justice and democracy again today.



The Texas “Trump Train” that ambushed a Biden-Harris campaign bus in Fall 2020. This attack was part of a trend of increased political violence incidents during the 2020 election cycle which culminated in the insurrection and violent assault on Congress on January 6, 2021.

The Protecting Our Democracy Act



After Watergate, we came together as a nation to enact a series of reforms designed to ensure that something like what Nixon did would never happen again. Today, like then, we need a response commensurate to the unprecedented abuses of the Trump presidency.

That's why, starting in 2018, we began preparing for this post-Trump moment, anticipating an opening to shore up the guardrails around the unchecked imperial presidency and to prevent a Trump 2.0 from rising in the future. We began by laying out a policy agenda for restoring those guardrails: the [Roadmap for Renewal](#).

Throughout 2019, we used the Roadmap as a basis for working with members of the House and Senate to introduce a raft of legislation designed to fix the damage and strengthen our democratic institutions. In 2020, we proposed to the Speaker's Office that they package together all of those and

Today, like after Nixon, we need a response commensurate to the unprecedented abuses of the Trump presidency.

other reforms and create a single omnibus piece of legislation that could stand as the response to the Trump era. Working with a coalition to support this effort, House Democrats agreed and in September 2020 unveiled a [landmark piece of legislation](#): the [Protecting Our Democracy Act](#). In the wake of Trump's defeat, *The New York Times* [referred to it](#) in these terms: "Two major pieces of legislation, the Protecting Our Democracy Act and H.R. 1, will be the main vehicles to address the sweep of questionable practices in the Trump era."



The New York Times

"Two major pieces of legislation, the Protecting Our Democracy Act and H.R. 1, will be the main vehicles to address the sweep of questionable practices in the Trump era."

The Protecting Our Democracy Act includes reforms in the following categories:

- **Preventing abuses of presidential power** like the many we saw over the last four years. The Protecting Our Democracy Act concentrates on preventing abuses of the pardon power, something we have [focused extensively on](#); making the emoluments clauses enforceable; and extending the statute of limitations for any offense committed by a sitting president or vice president.
- **Restoring checks and balances** to create a more functional relationship between Congress and the executive branch. Here, the Protecting Our Democracy Act aims to make congressional subpoenas more enforceable; allow Congress to more effectively control [the power of the purse](#); make it harder to bypass Congress in filling executive branch roles; and strengthen the Congressional role in emergency declarations, an area we have [focused](#) and [litigated](#) on.
- **Strengthening accountability and transparency.** This will take the form of protecting Inspector General independence, protecting whistleblowers, and strengthening enforcement of the Hatch Act. Each of these elements for ensuring accountability and transparency have been sorely tested over the last 4 years—[now is the time to buttress them moving forward.](#)
- **Ensuring DOJ independence from political interference.** This was the first issue we raised when we launched Protect Democracy, and as we explain on page 48, we have devoted extensive resources to successfully stopping the worst from happening on this front. Moving forward, the Protecting Our Democracy Act would ensure such extensive civil society efforts are not necessary, by requiring much-needed documentation of contacts between the White House and DOJ on specific matters and requiring the DOJ's Office of the Inspector General to review those contacts for appropriateness and to alert the House and Senate Judiciary committees of potentially inappropriate contact.
- **Protecting our elections from foreign interference** by requiring that political committees and candidates report foreign contacts and clarifying the Federal Election Campaign Act prohibition on foreign donations to include information used to obtain political advantages. These provisions are vitally important both in better defining prohibited foreign interference and in enhancing penalties for violating rules governing foreign contact.

We've spent the past year getting key policymakers and stakeholders on board, and are now working to get the Protecting Our Democracy Act enacted into law. We're seeing progress already: in 2019, the part of the Protecting Our Democracy Act that would reform presidential emergency powers passed out of the Senate Homeland Security and Government Affairs Committee by an 11-2 bipartisan vote; and in early January, a provision shielding independent inspectors general passed the House unanimously. By now, Congress has held hearings on six different major provisions of the Protecting Our Democracy Act, and Rep. Schiff, who has led the effort, has publicly committed to a Fall 2021 introduction. We will continue to push for these vital reforms, because we know that the danger of authoritarianism did not disappear when Donald Trump left office, but rather remains clear, present, and if anything, more dire.

In 2020, we proposed to the Speaker's Office that they create a single omnibus piece of legislation that could stand as the response to the Trump era. Working with a coalition to support this effort, House Democrats agreed and in September 2020 unveiled a landmark piece of legislation—the Protecting Our Democracy Act.

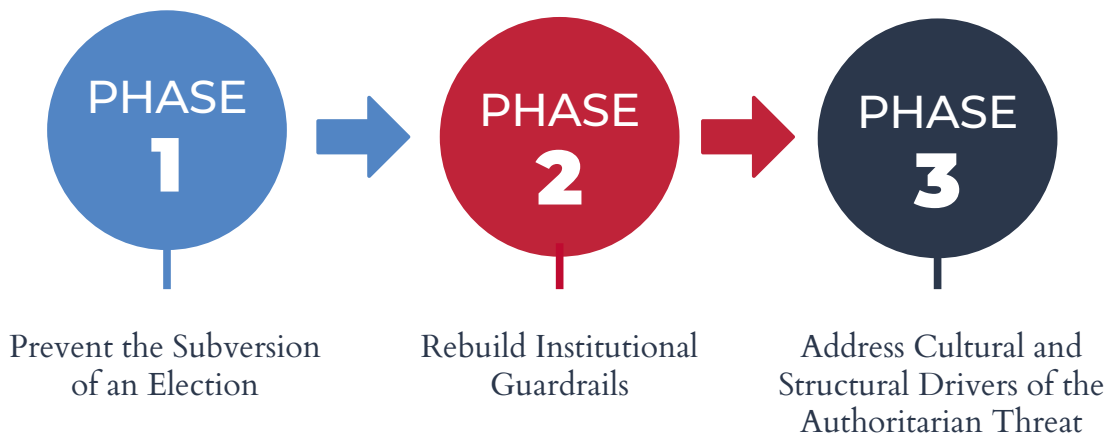


**Protecting
Democracy in
2021 and Beyond**

Protecting Democracy in 2021 and Beyond

Defeating the forces of authoritarianism and creating the secure and multi-racial democracy to which at our best we have aspired will require short, medium and long term strategies. While we prevent the proverbial ceiling from caving in, we must also reinforce the beams and address the structural flaws that allowed the termites into the building in the first place. In the short term, we must prevent the corruption and subversion of future elections. In the medium term, we must make our governing institutions more resilient. And over the long term, we must address the underlying structural and cultural weaknesses that are driving the present challenges to democracy. Because in the end, the illiberal, anti-democratic faction must ultimately be defeated—politically, democratically, and peacefully, but forcefully.

While we prevent the proverbial ceiling from caving in, we must also reinforce the beams and address the structural flaws that allowed the termites into the building in the first place.



To succeed in our mission, we must simultaneously take on three phases of work: in the short term, preventing a worst-case electoral coup; in the medium term, rebuilding and renewing democratic institutional guardrails; and in the long term, addressing the underlying factors driving the threats to our democracy.



Phase One: Preventing the Subversion of an Election

Preventing the Subversion of an Election

The first phase in the strategy to prevent American democracy from declining into authoritarianism is **stopping the short term assault on election integrity** that could allow an effort like we saw in 2020 to succeed in undermining the election in 2022 or 2024.

In 2020, notwithstanding Joe Biden receiving seven million more total votes and 74 more electoral college votes, Donald Trump came closer than any president in American history to subverting the will of the people and installing himself in office anti-democratically. What stopped him was a massive civil society movement, of which Protect Democracy was a part, and a handful of principled Republican office holders in key states who refused to do his bidding, which together enabled key institutions to hold the line.

But those office holders are being removed or replaced with more pliable hyper-partisans. And the rules and levers that protected the will of the people and prevented a coup in 2020 are being systematically targeted by the autocratic faction to provide, in the words of one scholar, “a way to overturn an election with the veneer of legality.”

At root, this effort is just the latest in our nation’s ugly history of white supremacy, as it is designed to disenfranchise or nullify the votes of an ever more diverse electorate in order to retain ultimate political power in the hands of a shrinking minority of those groups who are used to having hegemonic control over American government. Simply put, the faction that stormed the Capitol and is now trying to

corrupt the electoral process would rather abandon democracy than have to share it with a multi-racial nation.

To stop that is going to require three things:

1. First, stopping legal and structural changes at the state level to how elections are conducted and decided that would provide a quasi-legal pathway to subverting an election.

We will do this by pursuing a multi-pronged strategy. The first step has been to raise attention to this danger, which we’ve done via a [report](#) we released in April that has already received significant media coverage (by [Tom Friedman](#), [Michelle Goldberg](#) and [Rick Hasen](#) in *The New York Times*, and Fred Hiatt in the *Washington Post* [here](#) and [here](#)) and [multiple new bills](#) in Congress. We are now working with Congress to try to move federal legislation to reverse dangerous measures in the states. But recognizing the significant challenges to passing federal legislation, we are simultaneously building campaigns at the state level to block or mitigate the harm of these anti-democratic actions. Those campaigns will include legislative advocacy, strategic media, and potentially litigation. Importantly, they also will include engaging the business community, which thus far has provided one of the most effective counters to aggressive Republican attempts to pass anti-democratic legislation in state houses where they have unified control. Finally, we will continue to deploy

our two softwares—VoteShield and BallotShield—to provide a further check and backstop on improper interference with our voting systems.

2. Second, confronting and reversing the tide of disinformation that is being used as both an engine for producing these legal changes, as well as a way to salt the earth for future elections and democracy itself by undermining trust in their ultimate fairness.

We will do this, first, by rebutting efforts to further spread the Big Lie, as we’re doing in Arizona by [challenging](#) the legitimacy of the fake “audit” being performed there. Second, we will build a new project to counter disinformation that will do three things: (1) seek to hold the speakers of disinformation accountable via defamation litigation; (2) work to change the policies of the gatekeepers of disinformation—the new media platforms—through direct-to-business advocacy, litigation and regulation; and (3) explore ways to support new research on how to help the audience for disinformation better avoid falling prey to it.

3. Third, ensuring accountability for those who have engaged in or continue to engage in anti-democratic behavior to create a meaningful deterrent to its recurrence.

We know from international experience and history that if there’s no accountability for past abuses, they will only repeat themselves more dangerously. We will do this via litigation, like the [lawsuit](#) we joined on behalf of two Capitol Police officers against former President Trump for injuries they sustained on January 6; and the [two lawsuits](#) we

filed in Texas to hold accountable the self-proclaimed “Trump Train” that tried to run a Biden-Harris campaign bus off the road, as well as against the local law enforcement agency that failed to come to the bus’s aid. We are also pursuing accountability through the work we’ve done with Speaker Pelosi’s office to ensure there is a Congressional investigation into the events of January 6. An important aspect of this work is also to ensure that there is extreme clarity that there will be severe consequences under the law for acts of political violence.



The New York Times

How Republican States Are Expanding Their Power Over Elections

- With Republican-led states mounting an expansive takeover of election administration, Democratic officials of color have been some of the earliest casualties.
- Republicans in states like Georgia and Arkansas have also stripped secretaries of state of their power and made it easier to overturn election results.



Lynsey Weatherspoon for The New York Times

After we published a [follow-up report](#) in June in partnership with States United Democracy Center and Law Forward, it drove (and was featured in) [this story](#) on the front page of the New York Times.



Phase Two:
Rebuilding Institutional
Guardrails

Rebuilding Institutional Guardrails

While protecting the 2022 and 2024 elections and safeguarding voting rights must be our top priority, since 2018 we also have been working simultaneously on phase two of the plan to protect democracy: repairing and strengthening our democratic institutions to be more resilient should a future authoritarian gain power; and to be more inclusive of the full diversity of the nation.

The experiences of Hungary and other countries demonstrate that often the gravest threat to democracy is not Strongman 1.0, but Strongman 2.0. Viktor Orbán's first term as Hungarian Prime Minister did not mark the death knell of Hungarian democracy. Rather, it was when he returned to power in 2010, having better figured out how to work the levers of the system, that he far more effectively dismantled Hungarian democracy.

Similarly in the United States, for all the damage Donald Trump did during his term in office, he was ultimately democratically turned out of power. A Trump 2.0, whether Trump himself or a copycat successor, will be far more dangerous—as evidenced by how Trump has further captured the Republican Party and figured out exactly where in the system he needs to make changes to succeed next time where last time he failed. The danger is amplified by the reluctance of too many in the Democratic Party to invest political capital in building stronger guardrails. In short, as Zeynep Tufekci has warned, ["America's Next Authoritarian Will Be Much More Competent."](#)

We therefore must focus on restoring the balance of powers between the ever more imperial executive and a hollowed out and broken Congress. To do this, we must broadly enhance Congress' capacity to function as the primary and most representative branch of government as contemplated by the Constitution. This means not only increasing its resources, but reforming some of the structural barriers it has faced to being able to do its job.

Working with the Speaker's office, we helped design the Protecting Our Democracy Act, which *The New York Times* called one of the two "main vehicles to address the sweep of questionable practices in the Trump era." And through separate legislation, we are pursuing ways to rebalance power between the branches on war powers, and to strengthen accountability mechanisms for when government officials violate our Constitution in ways that strike at the heart of building an inclusive, multi-racial democracy. We must pass these reforms.

And beyond Congress itself, we must strengthen a range of other democratic institutions critical to a healthy democracy, from hardening the institutional guardrails within federal agencies that prevent anti-democratic abuses, to raising the baseline requirements for administering elections in secure, reliable, inclusive and non-partisan ways.



Phase Three: Addressing Cultural and Structural Drivers of Authoritarianism

Addressing Cultural and Structural Drivers of Authoritarianism

The present assault on our democracy did not materialize overnight. It arose from a constellation of factors, some global, some domestic, that need to be addressed if we're to return our democracy to the path of perfecting our union. Therefore, the third phase in the plan to protect democracy will require us to **address the structural and cultural factors that inflate the political power and appeal of authoritarianism.**

To date, we have only begun to develop this phase of work, but for the following reasons, a greater investment of effort is needed if we're to ultimately succeed.

In many ways, the current Republican Party is behaving rationally, given the incentives of our political system. Because of the distribution of power in the Senate and the Electoral College, Republicans have a path to controlling both of those institutions with support from an overall minority of voters. Similarly, with the unchecked use of partisan gerrymandering and our current primary system, both parties have incentives to play to their most extreme voters—and on the right, their most extreme voters no longer support democracy.

But that is not the only cause of our current woes. As numerous studies show, the American people had been losing faith in democracy for decades leading up to 2016. And support for democracy is weakest among Americans under the age of 40, who are increasingly open to non-democratic forms of government.

If we are successful, this “new democracy” will be one that is more inclusive, more resilient, and more appreciated by all.

To get our democracy back to safer ground, we are going to need to address both the structural incentives in our system that are driving these dynamics, as well as the socio-cultural drivers. Addressing the structural problems will likely require making changes to electoral designs that are more likely to produce governing bodies that are better representative of the actual electorate.

Addressing the socio-cultural drivers will be much harder. There's broad recognition of the fact that law and politics are downstream from culture, and that our political culture is unwell, but we as a nation are still searching for compelling solutions to this problem. For that reason, we are building up a think tank side of the organization that will focus, among other things, on developing ideas for how to mitigate—recognizing we're unlikely to entirely cure—some of the trends around polarization that are deepening the ruptures in our national community that have always existed but in recent years appear to be getting worse.

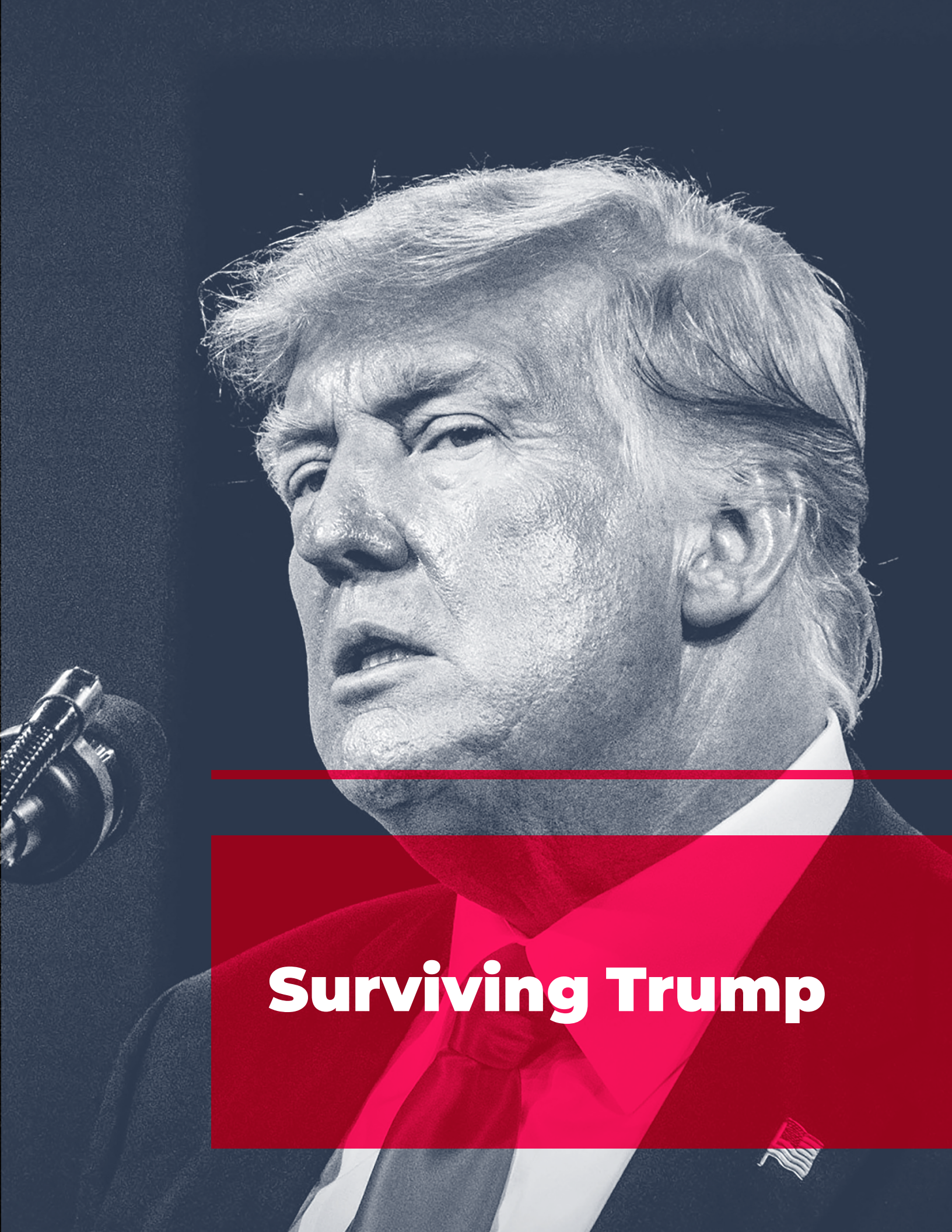
While we are not naive about how difficult this last phase of work will be, and we're aware we're only in the early stages of developing it, there are a few reasons why we are confident it is worth us investing in. First, even before ramping up a dedicated think tank arm of the organization, we've repeatedly had success taking ideas that were not in the center of national conversation and moving them there. Second, we've been

among a small handful of groups who've been able to build cross-ideological alliances in this space. And third, as discussed in the prior section, we built this organization to be good at creating whatever new products the situation demanded, and whether it be filing litigation or building softwares, we've seen a focus on strong talent and strong management produce impactful results.



This is undoubtedly an ambitious scope of work. And one organization cannot reasonably be expected to do it alone. Instead, succeeding in this work requires a broad ecosystem of organizations that are willing to invest in protecting and improving our democratic processes and institutions. That means we seek to build a broad coalition (both within our staff and with our partners) and are willing to work with people with whom we might vehemently disagree about policy or even the most contentious questions of constitutional interpretation, so long as we're united in a sincere and fundamental belief in the superiority of liberal democracy over other forms of organizing society.

If we are successful, we will not have returned our democracy to some non-existent utopian moment from the past. Rather, we will have helped shepherd our democracy through this period of transition and crisis and into an era in which democracy is once again broadly accepted as “the worst form of government except for all the others.” This “new democracy” will be one that is more inclusive, more resilient, and more appreciated by all.



Surviving Trump

Surviving Trump

With the Trump presidency in the rearview mirror, there has been and will be a lot of discussion about how we survived the past four years. One tempting view is that the system magically held—that the founders bequeathed to us a perfect structure that could withstand even the most pressing challenges. But a more accurate story is that the system held because people used the tools the Founders placed within it precisely for moments like these. After all, when Benjamin Franklin was asked upon leaving the constitutional convention what they had created, his response was, “A Republic, *if you can keep it.*” He understood that the system they’d devised was not self-executing, that responsibility for upholding it would rest in the hands of its citizens.

Because our mission centers on preventing the “worst cases,” we often evaluate our impact based on the counterfactual: what would have happened if not for our actions? In the case of the Trump presidency, there were three core tactics that would have manifested the “worst case” scenario:

1. **First, he could have rigged our election systems to perpetuate his stay in power indefinitely—as other autocrats have done—to essentially make himself president for life.**
2. **Second, he could have placed himself above the law, freeing himself to engage in criminal acts or other violations of law with impunity.**
3. **Third, he could have abused the powers of his office to subvert our system of government and of checks and balances.**

Here is what we did to confront each of Trump’s tactics.



Making Sure Trump
Couldn't Rig Our
Electoral System to Stay
in Power Indefinitely

By Using Federal Law Enforcement to Go After His Opponents

From day one, Donald Trump knew that no single event was more responsible for making him President than James Comey's decision to reopen the investigation into Hillary Clinton in the final days of the 2016 election. Comey's decision upended the news cycle twice in the final 11 days as Trump was trailing badly, and almost certainly tipped enough votes to more than make up the 80,000 vote margin across the three states that handed Trump the presidency.

So, from his earliest days in office, Trump sought to bring the Department of Justice and FBI under his complete control in order to be able to run a similar play in 2020. From the start, he wanted "loyalty" from James Comey. He wanted the Attorney General to be his personal Roy Cohn. He wanted to be sure the Department of Justice would investigate his rival in the 2020 election and tip the outcome once more in his favor.

From day one at Protect Democracy, we set out to stop that.

The very first thing we did as an organization was to issue a memo to the media and Congress explaining the history of rules governing contacts between the White House and Department of Justice. As an organization formed by former White House and Department of Justice lawyers, we understood how crucial these rules are to preventing the politicization of law enforcement. Our work in early 2017 helped force the Trump White House to disclose its own policies on

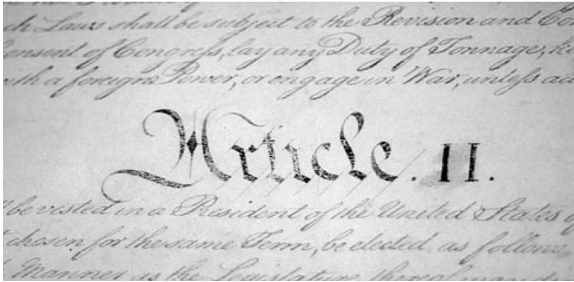
White House-DOJ interactions, and led to [media exposure of how its staff were violating those policies](#). This laid the groundwork for [further interventions](#) and [media coverage](#). And by briefing key reporters in the national press corps on these rules and their importance, we helped the media tell one of the first big stories of the Trump Administration—Trump's demand of loyalty from James Comey and his ultimate firing—with the proper context about why those actions were so dangerous for our democracy.

Facing public blowback to White House interference in Justice Department matters, Trump began to make even more aggressive claims about his powers over the Department. In December 2017, he publicly asserted an "[absolute right to do what I want to do with the Justice Department](#)." We recognized that if he succeeded in persuading people of that, it would be hard to stop him from using the Department to aggrandize his own power in corrupt ways.

So we launched a campaign to counter his argument. First, we wrote an [in-depth legal analysis](#) of why he was wrong as a matter of constitutional law. Recognizing that the media would not cover a white paper, we embedded our arguments in a [legal brief we filed](#) on behalf of notable former DOJ officials such as Preet Bharara, the former US attorney for the Southern District of New York who was fired in the early days of Trump's presidency, and John Dean, who served as President Nixon's White House counsel and became a prominent figure in the Watergate scandal. Due to the high-profile signers, the brief [received media attention](#), elevating the white paper's arguments into a broader national discussion rebutting Trump's claims of absolute power over the DOJ.



No “Absolute Right” to Control DOJ:
Constitutional Limits on White House
Interference with Law Enforcement Matters



We wrote an in-depth legal analysis of why Trump did not have an “absolute right” to control the DOJ. We then embedded those arguments in a brief filed on behalf of high-profile former DOJ officials, drawing media attention and elevating the national discussion about DOJ independence.

We then organized legal experts and former federal officials to speak out in unison as the voice of the independent institutions that Trump was attacking and to help shape the national conversation around the rule of law. As one example, after Robert Mueller was appointed to investigate ties between the Trump campaign and Russia during the 2016 election, we coordinated [this statement](#) from nearly 1,000 former DOJ officials who served under every administration from Kennedy to Trump calling on the President not to fire Mueller and calling on Congress to swiftly and forcefully respond should he interfere in the investigation. As would occur repeatedly with other statements from this group of former officials, the statement received [widespread coverage in the media](#).

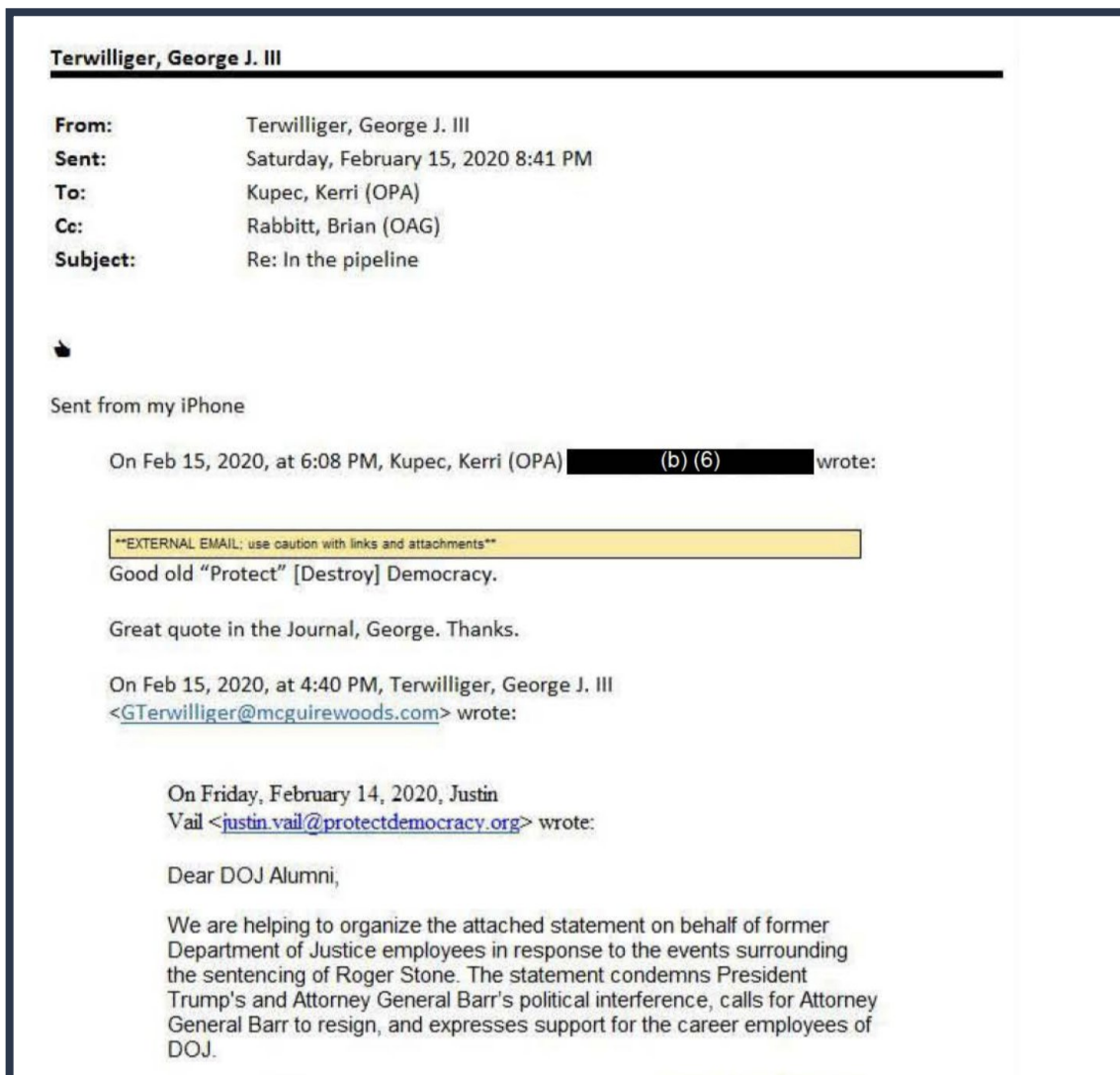
When Mueller ultimately released his report and declined to conclude whether the President had obstructed justice or not, we organized [a statement](#) signed by

over 1,000 former federal prosecutors from Republican and Democratic administrations asserting that President Trump would have been [charged with obstruction were he not president](#). The letter was [covered widely](#) in the press over the [subsequent weeks](#), which we followed by co-producing [multiple videos](#) that were seen by [3.5 million people](#). The letter is already being cited in early historical accounts of the era.

After the release of the Mueller Report, Protect Democracy helped to organize 1,000+ former federal prosecutors to make the case that, were he not President, Donald Trump would have been charged with obstruction of justice. See one of the videos we produced [here](#).

Our letters and legal arguments were significant not just in shaping national conversations, but also in putting direct pressure on Justice Department leadership. After Attorney General Barr personally intervened to overrule the sentencing recommendation of career prosecutors in the case of Trump ally Roger Stone

for lying and obstructing the House Intelligence Committee’s investigation, we organized a letter on behalf of 2,500 DOJ alumni calling for Barr’s resignation. That letter [caused a media firestorm](#) that forced DOJ leadership to [reverse course](#) on its interference in the sentencing.



Internal DOJ emails that were disclosed in late 2020 as part of a Freedom of Information Act request contained this message, in which DOJ spokesperson Kerri Kupec receives a note from former Deputy Attorney General George Terwilliger warning her of one of Protect Democracy’s efforts to help Justice Department alumni speak out about the Trump DOJ’s attacks on the rule of law. Kupec’s response: “Good old ‘Protect’ [Destroy] Democracy.” While we wish we had not needed to call out wrongdoing at the Justice Department these last four years, we are glad that they knew we were watching.

The 8 statements Protect Democracy organized from more than 2,500 Department of Justice alumni led to 138 major media stories, creating public awareness and political pressure to help protect independent law enforcement.

But Trump pressed on. His ultimate plan was to have Bill Barr release the so-called Durham Report in the final days of the 2020 election as his “October Surprise.” The report was ostensibly going to show—[according to Trump](#)—that Joe Biden and Barack Obama had somehow abused their offices in seeking to have Trump investigated for his ties to Russia.

So on October 1, 2020, we released our [final statement from DOJ alumni](#). This one, from nearly 1,700 alumni, called Barr out for what was looking like an effort to interfere in the election. After all, Trump had been publicly stating the Durham Report would come out before the election, which would have been unprecedented and inappropriate under DOJ’s own longstanding policy against taking any investigatory steps in the 60 days before an election that might impact or influence that election. Raising concerns further, Barr had announced a change in DOJ policy on October 7 to [remove barriers against DOJ taking such a step](#).

The statement we released landed [on the front page of USA Today](#) under the headline “1,600 former Justice Department lawyers accuse Barr of using DOJ to help Trump in election.” This was the 138th major media story covering the now 8 statements we’d released from Department of Justice alumni over the past four years.

Given the full-court press from the media and career attorneys, it became politically untenable for Barr to press forward with the Durham Report before the election, and [he finally stood down](#). No report was issued. Ultimately, Barr disappeared during the final weeks of the election. President Trump pleaded publicly for DOJ to intervene on his behalf in order to replicate the Department’s actions from 2016. During the night and early morning of October 7, Trump demanded on Twitter that [Barr start indicting and jailing people tied to the Russia investigation](#). On October 8, [during a Fox Business interview](#) he again mentioned that the indictments and crimes “includes Obama, and that includes Biden.” But his entreaties went unheeded. With DOJ sidelined, Trump lost the 2020 Electoral College vote by a margin only slightly larger than the margin by which he’d won in 2016.

In both cases, the close contests in a few key states underscored how impactful any small intervention was in the final outcome. Here, the counterfactual is stark: we feel confident that but for our four-year campaign to steel the spines of DOJ officials to resist Trump’s pressure, the chances of a DOJ October surprise in 2020 would have been materially higher.

Throughout this campaign, we heard repeatedly from sources within DOJ that our efforts had a material effect on staff still working at the agency. It was reported to us that DOJ staff felt empowered by the

voices of thousands of alumni and that knowing so many professional colleagues supported current staff upholding their oaths helped department lawyers resist pressure to engage in inappropriate behavior. If not for these efforts to empower DOJ staff, the misconduct and politicization at DOJ would likely have been worse—with grave implications for the election.

Indeed, in June 2021 *The New York Times* [reported on](#) new information demonstrating that Trump’s efforts to push the DOJ to act on the “Big Lie” were even more serious than was previously understood. According to that report, Trump apparently pushed William Barr out of the Attorney General’s role in order to elevate actors in the Department whom he believed would be willing to use federal law enforcement to intervene in the election aftermath to pursue his baseless claims of fraud and help him subvert the election results. But even then, after years of bolstering it for this moment, the Department held strong.

By Suppressing the Votes of Communities of Color and Others Likely to Vote Against Him

The other effort Trump launched from day one, also designed to keep himself in power in perpetuity, was an attempt at wide-scale vote suppression. On May 11, 2017, Trump [announced the creation of the Pence-Kobach Commission](#), whose technical mandate was to review alleged voter fraud and voter suppression; in truth, the commission was widely understood to be an effort to trumpet false and misleading claims about nonexistent voter fraud in order to justify measures to crack down and suppress the votes of groups of voters who tend not to support Trump.

Within days of the Commission asking election officials all over the country to hand over every state’s voter registration data to the Trump Administration, we partnered with the Brennan Center for Justice to [submit a letter](#) to the White House’s Office of Management and Budget [explaining](#) how the data request violated an obscure federal law. At the same time, we sent that letter to the Secretaries of State and Attorneys General in every state, arming them with the legal rationale they needed to refuse to disclose the data that was requested in violation of federal law. We then [sued](#) the Commission to [halt its data collection efforts](#). In January 2018, the White House disbanded the Commission, citing its inability to obtain data from states and the ongoing litigation challenges. Along with partner organizations, we had [shut down the Commission](#).

Shutting Pence-Kobach was a major win, but by no means had voter suppression efforts dissipated. A former member of the Commission, J. Christian Adams, who has a long history of voter fraud alarmism, started publishing a series of reports entitled “Alien Invasion.” The reports suggested that Virginia public records indicated that thousands of supposed non-citizens were illegally voting in Virginia, thus committing felonies. But the truth was that Adams’ nonprofit had received [warnings](#) from Virginia [elections officials](#), and even one of their own [volunteers](#), that they were making [false representations](#) regarding the Virginia election records underlying their publications. Despite these warnings, Mr. Adams and his organization published the reports accusing innocent Virginians of committing felonies because—in their own words—“[the fog of war favors the aggressor](#)” in their battle to change election laws and chase headlines. Making all of this worse, Adams didn’t just wrongly suggest that folks were committing felonies, he published their names and addresses (and sometimes even

their social security numbers). This list made its way online, meaning that the individuals listed in the report had to be afraid that every knock on the door or every call on the phone might be a threat to their safety.

So we sued. And not just to stop this act by Adams, but to [establish that the same Ku Klux Klan Act that was designed in 1871 to stop those efforts then](#) could also be used in 2018 to stop similar, even if digital, efforts now. And we [won](#). The Judge—an appointee of President George W. Bush—agreed with our legal argument whole cloth. That victory on the key legal issue (along with damaging discovery that has subsequently been used by [The New York Times](#) in an expose on bad-faith voter disenfranchisement) forced Adams to settle the case on [favorable terms](#) for our clients and every other Virginian named in the reports. But even more importantly, the result served as a warning to others. Not only did Adams not list the names and addresses of alleged non-citizen voters when his organizations released two subsequent reports in Pennsylvania and New Mexico, but a news outlet in Minnesota reported that an Adams copycat group there [had decided not to publish the names of people it dubiously thought were voting illegally](#) in direct response to the result of our lawsuit. And, even better, voting rights groups across the country have used the pathbreaking legal precedent we obtained to battle voter intimidation throughout the country.

In another lawsuit with our partners at Forward Justice, we challenged North Carolina's system for disenfranchising voters who had served time in prison for prior felonies and are still on probation or parole, often because they are simply unable to pay fines or court fees. This law affected approximately 70,000 North Carolina citizens and disproportionately harmed Black people and other people of color,

stripping these taxpayers of representation and the right to shape the laws that regulate their daily lives. In the words of one plaintiff in the case, who lost his work for a construction company due to the pandemic and was barred from voting because he could not pay back his roughly \$3,600 in debts: “As I have gotten older, I have realized that every person’s voice





matters; and even if I don't get the results I want, I [want to] say that I played a part in the election." On September 4, 2020, [we won the key legal battle in the case](#), with the Court ruling that North Carolina's felony disenfranchisement law violates two separate provisions of the state's Constitution. Tens of thousands of North Carolinians became eligible to vote immediately, and were able to participate in the 2020 election.

By Subverting the Election Administration Itself

In early 2017, we asked leading experts on election security what they were most concerned about for future elections. To a person, they all identified the voter registration databases. Indeed, in 2019 when the Senate Intelligence Committee released [its final report on Russia's interference in the 2016 election](#), it too described one of the leading nightmare scenarios as foreign entities making changes to the state voter registration databases in a way that might create chaos or change the outcome of an election.

Here's how it could work: if Russia (or any malicious actor) got into the databases—and [we knew from DHS](#) that the Russians had successfully penetrated 21 states' files while trying to access all 50 states' files in 2016—they could make small but potentially disastrous changes. For example, if someone lived at 123 Main Street, the hackers could add a digit to make it 1234 Main Street. On Election Day, that voter would be sent to the wrong polling place. Some voters, upon learning of the error, would be able to trek across town to the right location; but someone who'd waited in line for an hour to vote during their lunch break from work might not be able

The experts we consulted all agreed that a tool like VoteShield would be critical to preventing interference in voter registration databases. So we built it. By 2020, VoteShield was operational in 19 states and was being used by both Republican and Democratic election officials at the state or county level in eleven states. We had taken our concept from design to full operation—and it worked.

to do so. Were hackers to target a particular demographic in this way, they could depress turnout among that group and, at scale, change the outcome of the election.

The experts we consulted all agreed that a tool that took the raw data in public voter files, spotted the differences from week to week and month to month, and used machine learning to compare them against historical trends to spot statistically significant anomalies would be critical to preventing interference in voter registration databases. So we built it.

By 2020, VoteShield was operational in 19 states and was being used by both Republican and Democratic election officials at the state or county level in eleven states. We had taken our concept from design to full operation, and had built an alarm system that not only monitored the integrity of voter databases, but also—through the development of BallotShield—monitored absentee ballot requests, submissions and curing rates from across the country in time for a presidential election that would feature more mail-in voting than any other in history.

And it worked. We didn't detect foreign hacking of the files—because there wasn't any, as DHS [has confirmed](#). But what we did detect were multiple domestic errors: mistakes made by election administrators trying to do the right thing. In one county, for example, VoteShield detected the removal of over 7,000 voters in violation of federal law. When the state board of elections was unresponsive to the issue, we escalated it to the Chair of the State Senate Election Committee, who intervened to get the removed voters restored in time for early voting. And about a month before the election—in one of the closest states in the presidential election—election administrators working with our VoteShield team detected the erroneous deactivation of nearly 100,000 voters in the state's most populous county. Had the mistake not been caught, those voters would not have received their absentee ballots. In the end, the outcome in that state was decided by a roughly equal number of votes to the number of voters who received absentee ballots because the mistake was resolved. On the BallotShield side, we were able to identify a locale in a swing state with a backlog of over 10,000 unmailed ballots, and another locale with an unusually slow curing rate. Due to BallotShield monitoring this information and the strength of our ongoing

In the polarized environment of the time, any sort of challenge to an election could spiral into a crisis, and it was hard to ignore the anti-democratic public statements of the President, which suggested he might either try to take advantage of a crisis, or even provoke one himself. So in early 2019, as part of an effort to anticipate a range of potential crises that might befall a future U.S. election, we established the National Task Force on Election Crises, a cross ideological group of more than 50 experts who would spend two years mapping out potential election crises and building protocols in advance for how to navigate them in a way that protected our democracy.

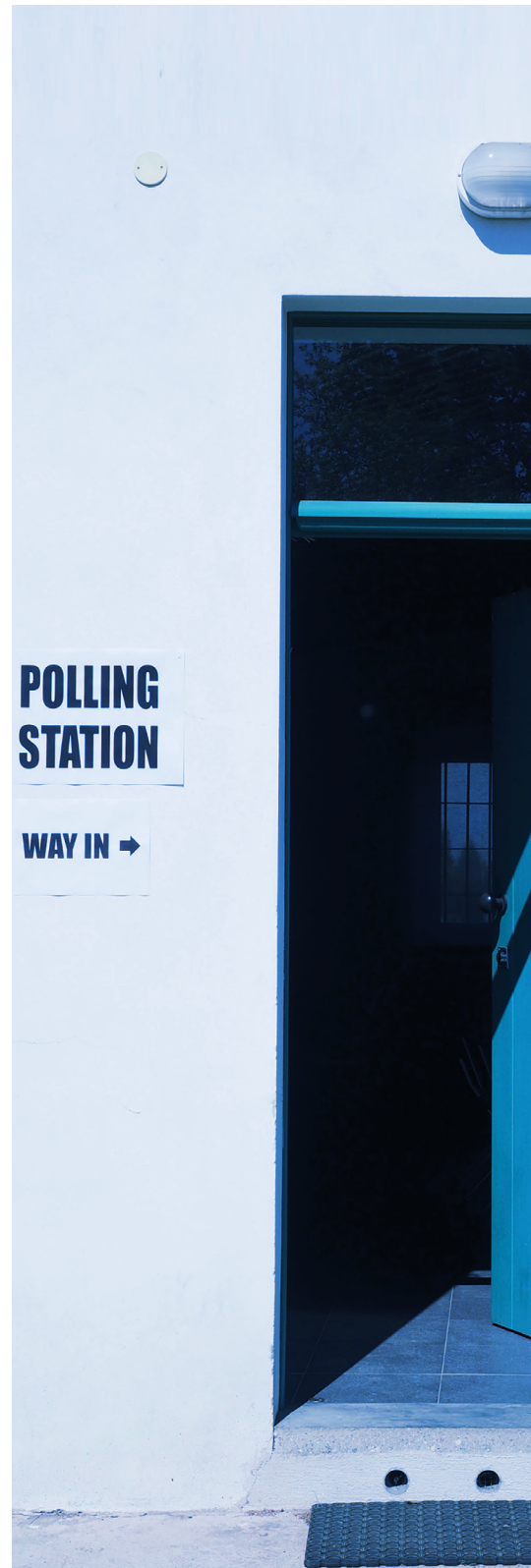
collaboration with state and local election officials, administrators were able to dispatch the resources needed to correct both issues.

Though neither malevolent nor intentional, these anomalies were significant and could have had a substantial impact on the election if they had not been resolved.

But protecting the voter databases was not the only concern—far from it. In the polarized environment of the time, any sort of challenge to an election could spiral into a crisis, and it was hard to ignore the obviously anti-democratic public statements of the President, which suggested he might either try to take advantage of a crisis, or even provoke one himself. So in early 2019, as part of an effort to anticipate a range of potential crises that might befall a future U.S. election, we established the [National Task Force on Election Crises](#), a cross-ideological group of more than 50 experts from across disciplines who would spend two years mapping out potential election crises and building protocols in advance for how to navigate them in a way that protected our democracy.

As the election got closer, the Task Force would play a key role.

By the summer of 2020, it was becoming clear that Trump was going to try to cheat his way to a second term. The arrival of the COVID pandemic complicated matters considerably. We foresaw five hurdles we would need to surmount to ensure a free and fair election: first, we needed to ensure the vote itself went smoothly and fairly; second, ensuring that truth won the immediate post-election narrative over fiction and lies; third, ensuring that any court challenges were resolved in accordance with the law and not in accordance with Trump's openly stated scheme to have the Supreme Court resolve the election in his favor; fourth, ensuring that state legislators would not





The five hurdles to a free and fair election

seek to overturn the popular votes in their states; and fifth, ensuring that on January 6, 2021, Congress certified the results.

With a coalition of partners, we set out to achieve each of those five things. And we succeeded.

1. Securing the Actual Voting:

As mentioned above, we had already been involved in a number of efforts to stop voter suppression and intimidation long before election season got underway. We had also worked to get multiple states to upgrade their voting machines to ensure all voting machines had some form of paper trail. Critically, in 2019, we led a successful effort with our partners at Verified Voting to get the Republican legislature and Democratic governor in Pennsylvania to agree to spend [\\$90 million to purchase new, more secure voting machines](#) for the 2020 election. Had the new voting systems not been purchased, the controversies and conspiracies Trump tried to manufacture to undermine the election results would have been harder to debunk.

As the primaries began in the midst of the COVID pandemic, the National Task Force on Election Crises began issuing technical assistance to local and state election officials on how to navigate the pandemic-imposed limitations and still ensure a successful election. The experts on the Task Force then met with a number of key decision makers, including chief election officials and elected leaders of battleground states, as well as influential associations and networks including the National Governors Association. To further assist local officials struggling to adapt to COVID, we helped recruit organizations to join the Power the Polls coalition—a collective effort to recruit young and healthy poll workers to staff voting sites, so that the more vulnerable older poll workers who usually staff Election Day didn’t have to. The coalition’s efforts contributed over 700,000 new poll workers to the cause. And in places where election officials didn’t voluntarily do the right thing, such as Wisconsin, [we sued](#). Even though we ultimately lost that case at the U.S. Supreme Court, over the course of litigating it, the coalition we were a part of extracted several key concessions from Wisconsin election officials to make voting more accessible during the pandemic.



2. Winning the Immediate Post-Election Narrative:

Winning the immediate post-election narrative also took many months of preparation and work. One expert on how authoritarians corrupt elections warned us in the summer of 2019, “by Election Day, the cake is baked.” Their point was that autocrats salt the earth well in advance of elections, undermining truth and sowing distrust in any institution that could hold them to account. By the time they claim a corrupt victory on Election Day, the public is already persuaded or persuadable enough to the lie and there’s no one with sufficient standing to persuade them otherwise.

We knew Trump was going to try to prematurely claim victory the night of the 2020 election and assert that any late-counted votes after election night were fraudulent and shouldn’t be counted. How did we know he was going to do this? Because he did it in 2018.

Since 2003 when the Help America Vote Act created the use of provisional ballots—which are disproportionately used by Democrats—social scientists have observed a phenomenon in elections they call “the Blue Shift.” This was a vote-counting phenomenon in which the Republican candidate in close races would hold a larger lead on election night than what would be the ultimate result, only to see the Democratic candidate close that lead as the “County Canvass” of votes, including provisional and absentee ballots, took place into the next day. This happened in both Arizona and Florida in the 2018 midterms. On election night, Martha McSally appeared to be leading the Arizona Senate race, while Rick Scott and Ron DeSantis led the Florida Senate and Gubernatorial

All told, the Task Force held a total of 18 briefings attended by more than 330 members of the media from 171 different outlets, to help inoculate the American people against Trump’s election disinformation. And it met 1:1 with all of the major social media platforms to help them mitigate the ability of bad faith actors manipulating their platforms to corrupt the election.

races. But as the county canvass results rolled in over the next 24 hours, all three Republican candidates’ leads shrunk, with McSally ultimately falling behind and losing to Kyrsten Sinema. As those races were tightening, Trump [asserted without evidence](#) there was “fraud” and insisted the races be called in favor of the Republicans before all the votes were counted. “Must go with Election Night [results]!” he [tweeted](#). To his credit, Governor Doug Ducey of Arizona [rejected](#) that characterization, defending the county canvass process as normal and proper. Governor Scott in Florida, who was himself a candidate potentially benefiting from Trump’s reckless bombast, said nothing.

As the 2020 election neared, Trump began making his intent to prematurely claim victory explicit. On November 1, reports emerged that he [would declare victory on election night](#) if it “looks like he’s ahead.” Because Trump had been railing against vote-by-mail so feverishly, polling suggested there could be a massive gap beyond the usual “Blue Shift” in which Democrats voted in advance by mail in large numbers and Republicans voted largely in person on Election Day. Election Day ballots are counted first in several key states, including Pennsylvania, Wisconsin, and Michigan, so in a close race, Trump could appear to be leading by a significant margin on election night, only to see that lead close and potentially disappear as mail-in ballots are counted into the following days. This became known as the “Red Mirage” and Trump made clear he was going to weaponize it.

To preempt Trump’s plans, we worked to inoculate the American people to this possibility early in election season. The Task Force, along with a coalition of partner organizations, held a media summit on September 17, briefing more than 100 journalists and editors from all of the major national newspapers and television outlets. The purpose of the summit was to help the media [preview](#) and [explain](#) the Blue Shift/Red Mirage so voters [knew what to expect](#). Building on the summit, the Task Force issued legal guides that would be heavily cited by the press and held a series of follow-on briefings to help the media accurately educate the public on both the relevant arcana of how election mechanics are supposed to work, as well as how to be prepared for and identify bad-faith actions. These legal guides and briefings included preparing the media to cover the potential abuse of state-level certification processes and the Electoral Count Act, the 134-year old law that governs the counting of

electoral votes and was in fact the focus of the insurrectionist attempt to subvert the election on January 6. All told, the Task Force held a total of 18 briefings attended by more than 330 members of the media from 171 different outlets. And it met 1:1 with all

A poll we commissioned showed that by Election Day, three quarters of voters didn’t expect to know the results on election night. A majority said they understood that the “leader” in the vote count could change over time and that it wouldn’t necessarily be corrupt or erroneous for that to happen. By the time Trump tried to use the “Red Mirage” of heavily Republican in-person votes being counted earlier than heavily Democratic mail-in ballots to prematurely declare victory, a majority of the public was not fooled.



of the major social media platforms to help them mitigate the ability of bad faith actors manipulating their platforms to corrupt the election (Facebook regularly featured Task Force content on its Voter Information Center presented at the top of the feed to all American users during the election).

In the lead up to the election, reporters and outlets who attended these events repeatedly covered what we predicted Trump would do. A weekly tracking poll we commissioned in the fall of 2020 showed that by Election Day, three quarters of voters didn't expect to know the results on election night. A majority said they understood that the "leader" in the vote count could change over time and that it wouldn't necessarily be corrupt or erroneous for that to happen. By the time Trump tried to use the Red Mirage to prematurely declare victory, a majority of the public was not fooled.

The media accurately covered that late-counted votes were legitimate, that the process was proper, and that Trump's premature and evidence-free claims were the rantings of a madman.

It's impossible to prove a counterfactual, but it's worth considering what might have happened if Trump had tried the same stunt but in a scenario in which no one expected or understood it in advance. How many more people might he have convinced?

3. Fending Off the Court Challenges:

As an organization that in its early days was primarily focused on litigation, we ended up doing far less of this than we anticipated. That's because some of our partners, such as the Voter Protection Program, Democracy Docket, Fair Fight,

and the Lawyers Committee for Civil Rights, among others, ably did so much of this.

But we did engage in a few court battles by helping a prominent conservative attorney and a former GOP Texas Speaker of the House to weigh in. We helped draft an amicus brief and arranged local counsel for them in the case in which the Texas GOP failed to persuade a court to throw out thousands of Houston ballots because they were cast at drive-through locations. And we helped elevate conservative voices in the media to speak to Republican officials during a key moment in the Michigan certification process.

4. Stopping Any State Legislative Overrides:

As early as Fall 2019, we wrote a memo that predicted a losing candidate might try to have friendly state legislatures directly appoint Electors to the Electoral College in contravention of state law and the will of that state's voters. In August 2020, we launched a project to identify the key state lawmakers and other state officials who

We placed an op-ed by a former GOP election lawyer urging the Michigan state canvassing board to certify the results. The swing Republican board member ultimately voted to certify, upholding democracy at a crucial moment.

would need to go along for such a plot to succeed. Once identified, we planned to run an all-out blitz to stop them from doing that. In September 2020, we commissioned a law firm to research and write a 150-page legal guide to all of the ways that could happen in each of the battleground states, and who the key decision makers were at each stage of the process. We then built a coalition of organizations to power map those actors and surround them with influences to do the right thing and resist counterpressures.

The strategy ultimately would involve two streams of work. The first, led by Impact Project in Michigan and Voting Rights Lab in other key states, involved surrounding target officials with tested messaging designed to reaffirm the foundational aspects of our democracy—sometimes you win, sometimes you lose, but for 244 years we’ve accepted those outcomes and moved forward together. This messaging was delivered via phone calls, radio, and digital advertising to the communities and actors surrounding the target officials.

The second stream involved direct advocacy to the target officials using intermediaries they trusted and who had influence over them. In Michigan, for example, we helped provide public and private support for Republican officials who were inclined to do the right thing. When Senate Majority Leader Mike Shirkey asked for support in resisting calls to overturn the election results, we partnered with Issue One’s Every Vote Counts campaign to run targeted ads providing air cover for Shirkey’s decisions. When the state canvassing board certification vote looked like it was going to be close, we worked to highlight two influential voices in the local press the weekend before the state canvassing board vote. First, we worked with Issue One to [place an op-ed](#) by former

The op-ed was tweeted by the communications director for the Michigan Attorney General, making clear state law enforcement was closely watching. The two legislators decided to attend the meeting, but we understand they chose to bring their lawyers.

Michigan Congressman Mike Rogers about the national security implications of delaying, followed by Rogers making several key radio appearances on the day of the vote to emphasize the importance of certification. And second, at a critical moment in the certification process, we placed an op-ed by a former GOP election lawyer on how certifying the election results in Michigan was not a close call. The swing Republican vote on the state canvassing board ultimately voted to certify. We also helped to activate other business leaders and influential Republicans in the state to provide further support and reassurances to the Republican officials bearing the brunt of Trump’s pressure.

Finally, when Trump realized his effort was failing and he [invited](#) the Michigan legislature’s two Republican leaders to Washington for an Oval Office meeting, we fired a shot across their bow. Recognizing Trump’s transactional nature, we assumed he would offer the two lawmakers something in exchange for their help in overturning

Biden's victory in the state. So we arranged for an op-ed by a University of Michigan law professor to run the day before the scheduled meeting warning that merely by attending the meeting the lawmakers might open themselves up to a state investigation into whether they were offered or accepted a bribe at the meeting. The piece ran in *Politico* and then the *Detroit Free Press* the afternoon before the scheduled meeting. It immediately became the most read piece on *Politico* and, shortly thereafter, it [was tweeted out](#) by the communications director for the Michigan Attorney General, making clear state law enforcement was closely watching. We arranged for the op-ed to be shared directly with the two Republican legislators and learned that their staff were concerned about its implications. The next morning, one of the two legislators—Assembly Speaker Lee Chatfield—[texted the Michigan Secretary of State](#) to say he had not confirmed whether he was going to attend the meeting or not. We cannot say for sure whether the warning op-ed caused Chatfield to rethink attending the meeting, but one interpretation of events is that that's what happened. Ultimately, Chatfield and Shirkey decided to attend, but we understand they chose to bring along their lawyers. Again, we have no way to know whether the warning op-ed contributed to their decision to have their counsels sit in on the meeting, or whether having their counsels present deterred Trump from offering some corrupt bargain, so we can only speculate that it's possible the shot across the bow had its intended effect. But if it did, it was a vital step in deterring a state legislative override, and the counterfactual of a vote in Michigan to contravene state law and the will of the people paints a frightening picture.



5. Ensuring Congressional Certification:

We always knew that, at the end of the day, it could all come down to what Congress decided to do on January 6 during the joint session to count the Electoral College votes. In September 2020, we initiated a project to analyze all of the parliamentary tools Speaker Pelosi and Leader Schumer would have at their disposal should President Trump succeed in convincing Republican leaders to go along with his coup attempt. We conferred with Senate parliamentary experts, including a former Senate Parliamentarian, to review our conclusions. And then we shared our analysis with Speaker Pelosi, Leader Schumer, and others preparing for similar scenarios. We were ready for whatever legislative hijinks Trump allies might attempt.

What we did not expect and were not ready for was a violent mob storming the Capitol to physically prevent the vote count. That we reached such a tragic, watershed moment speaks to the deep rot in our democracy—fueled by a violent white supremacist authoritarian tradition that our country has yet to fully reckon with—that Trump exploited and worsened. We must excise that rot, hold its engineers and opportunists accountable, and heal sorely inflamed cultural divisions if we are to repair and renew our republic. Yet we can also be thankful that, on January 6, heroes like Eugene Goodman saved the day (and saved lives and potentially the Republic), and Congress was able to return to finish the vote count. And even though 147 seditious Members of Congress voted to reject the results, they had no way to change the outcome of the election. In large part, that was because Trump had been defeated in each of the four steps prior to congressional

certification in his attempt to subvert the election. The coup simply didn't have enough momentum by January 6 to succeed.

So, after four years of work, we can stand here today and say the president was not able to corrupt the election to keep himself in power. None of the counterfactuals we worried about and guarded against came to fruition. But that wasn't all we had to do to prevent the worst case scenarios.

The events of January 6 speak to the deep rot in our democracy that Donald Trump exploited and worsened. We must excise that rot, hold its engineers and opportunists accountable, and heal sorely inflamed cultural divisions if we are to repair and renew our republic.



Making Sure Trump Couldn't Place Himself Above the Law

We filed briefs again and again, citing legal chapter and verse why the President is not above the law, eventually assembling an ever-growing list of former Republican officials and conservative legal experts to sign them.

From the earliest days of Trump's presidency, he made an argument wholly foreign to our system of government: that he was somehow above the law. Days before his inauguration, a contestant on *The Apprentice* named Summer Zervos sued Trump for defamation. Zervos was one of the 26 women who accused Trump of sexual harassment or assault. Trump called her a liar and she sued him over it.

In his initial filing, Trump made the first of what would be an escalating series of legal filings over the course of his time in office that sought to make him more powerful than even British kings. In Trump's view, and as his lawyers argued in the Zervos case, because he was president, he could not be sued in state court.

Zervos's lawyers were very good but they specialized in white-collar crime, not constitutional law. So we reached out with an offer: we would recruit the three constitutional scholars, Stephen Burbank, Richard Parker, and Lucas Powe Jr., who had submitted an influential brief in *Clinton v. Jones*—the case in which the Supreme

Court rejected the idea that presidents are immune from civil suit for acts done before taking office. We filed a brief in the Zervos case making the same argument, this time against a president of the other party: presidents are not above the law.

We filed [the brief](#) in September 2017. Ours was the only amicus brief filed in this case. When both the trial level court and the appellate court ruled in favor of Zervos, the Washington Post and [MSNBC](#) noted that the courts' opinions closely tracked the arguments made in our brief.

Despite these rulings holding that Trump could not make the case go away just because of the office he held, Trump made the same argument again and again. Between 2017 and 2019, Trump's lawyers argued against making his tax records public and sought to dismiss defamation lawsuits on the basis that the president is immune from civil lawsuits, criminal investigations, and judicial orders. In his impeachment defense, he took this a step further, arguing that administration aides and officials don't need to comply with Congressional subpoenas. Each and every time, we were there.

We filed briefs [again](#) and [again](#), citing legal chapter and verse why the President is not above the law, eventually assembling an ever-growing list of former Republican officials and conservative legal experts to sign them.

This fight would culminate before the United States Supreme Court in the summer of 2020 when the Court handed down a ruling in a crucial case. In *Trump v. Vance*, the Court rejected the president's argument that he is absolutely immune to investigation. We filed a [brief](#) in that case on behalf of several dozen former Republican elected officials and

As a result of the Vance case, and this entire line of work, Trump may face consequences for his misconduct. What happens is yet to be seen. The Manhattan DA has indicted the Trump Organization on tax fraud charges. Zervos and E. Jean Carroll will get their day in court as well. And in all of these cases, Trump will have no get-out-of-jail-free card. The legal doctrine he sought to create to shield himself has been denied, for him and any future aspiring autocrat.

conservative appointees or legal scholars building on all those we'd filed since Zervos, arguing that the president, like all Americans, must follow the law—including complying with legitimate criminal investigations. The Court echoed our argument in its opinion. As George Conway, one of the signers, [wrote of our brief](#) in the *Washington Post*, and [tweeted](#): “It’s a great brief, signed by 37 conservative former public officials and lawyers. @protctdemocracy did a magnificent job crafting it.” We later heard that one of Vance’s lawyers had told others

that ours was the most helpful brief filed in support of their case.

The only thing that could prevent Trump from being held accountable now is politics.

Which is why after the election, we released [Towards Non-Recurrence: Accountability Options for Trump-Era Transgressions](#), a report based on our research into what history and international experience teach about holding regimes accountable in order to prevent history from repeating itself. That report formed the basis for a [full-page New York Times editorial](#) and has been [cited repeatedly](#) in the media. We’ve also shared it with the Biden Administration.

We’ve thwarted Trump’s efforts thus far to place himself above the law, and will continue to pursue accountability for his transgressions—not for retribution’s sake, but to deter recurrence.

As part of our accountability efforts, we fought Trump’s attempts to delegitimize his second impeachment. We did so by organizing [several public letters](#) from preeminent constitutional law scholars across the ideological spectrum, making the case that the impeachment proceedings were constitutional, that Trump’s First Amendment claims were “legally frivolous,” and that senators’ oath of office required them to make a decision based on the facts of the case since the Senate resolved the procedural question of the trial’s validity. Despite our efforts, Trump was ultimately acquitted in his second impeachment trial, though the vote to convict him marked the most bipartisan vote for conviction of a president in the history of the nation and laid the groundwork for further accountability efforts that are currently underway and of which we are a part.



**Making Sure Trump
Couldn't Override Our
System of Checks and
Balances to Govern by Fiat**

Beyond keeping himself in power improperly or placing himself above the law, Trump also threatened to wield his powers in ways that subverted our system of government and of checks and balances.

We sought to stop this as well, and had some successes and some failures.

By Abusing Emergency Powers

Perhaps the most paradigmatic abuse autocrats deploy to corruptly seize power is the declaration of an emergency. Indira Gandhi declared a national state of emergency in India in 1975 and ruled by decree for nearly two years. Hosni Mubarak ruled Egypt for nearly 30 years under a perpetual “state of emergency.” So when Donald Trump failed to convince Congress to appropriate funds for his border wall and declared a state of emergency to proceed anyway, we acted. We assembled a cross-ideological legal team consisting of Harvard law professor Larry Tribe, who represented Al Gore in the 2000 recount, former George H.W. Bush aide and acting Attorney General Stuart Gerson, and the center-right think tank the Niskanen Center to challenge the President’s emergency in court on behalf of Texas border communities. We felt it was important to demonstrate that this was not a partisan issue.

Although we prevailed initially in the District Court in Texas and [won a nationwide injunction](#) against the emergency, it was the legislative strategy that the suit helped prompt that was the more impactful development.

After filing the lawsuit, we presented a briefing on the relevant issues on Capitol Hill. The briefing was attended by more than

The nationwide injunction we won against Trump’s phony “emergency” lasted for thirteen months, and our coalition lobbied successfully to pass legislation reforming emergency powers through the Senate Homeland Security and Government Affairs Committee on a bipartisan 11–2 vote. A version of that legislation is now in the Protecting Our Democracy Act.

50 congressional staff, including from the Republican side of the aisle. Raising attention to the issue, we and many of our partners across the political spectrum lobbied Republican Senators and brought grassroots pressure on the Senate to reject the President’s emergency. After a bipartisan group of Senators introduced a resolution to terminate the national emergency, all of the Democrats and a dozen Republican Senators voted to override Trump’s emergency—the single largest defection from Trump on a significant issue in the Senate until after the 2020 election. Following that, we joined forces with the Brennan Center, ACLU, Bipartisan Policy Center, Project on Government Oversight, Republicans for the Rule of Law, Stand Up Republic, the Niskanen Center, the R Street Institute, and many others in a cross-ideological

coalition to press for legislative reforms to curb presidential emergency powers.

This coalition supported Senator Lee's introduction of the ARTICLE ONE Act, and lobbied successfully to pass it through the Senate Homeland Security and Government Affairs Committee on a bipartisan 11-2 vote. By the end of the Trump presidency, the Fifth Circuit reversed our win in the District Court, but legislative reform was already moving. Having passed out of committee in the Senate and earning the support of more than 18 Republican cosponsors, we helped ensure that a version of the ARTICLE ONE Act was incorporated into the Protecting Our Democracy Act unveiled by the Democratic House. The reform stands a good chance of being enacted into law. What's more, the overwhelming support behind it, and against presidential declarations of emergency, likely contributed to the fact that Trump didn't again abuse emergency powers—which is notable given how much he embraced and reused other powers vested solely in him once he discovered them.

Furthermore, the Senate's consideration of the termination provisions from the 1976 National Emergencies Act in the case of the border wall "emergency" became a template for pushing back on President Trump's unilateral actions in war powers and arms sales throughout 2019 and 2020. And the national emergency reform that grew out of this became a template that could be used for reform in other areas.

By Abusing War Powers

Scarier perhaps than an unjustified declaration of emergency would be an unlawful instigation of military action that turns into a broader conflict, or the dangerous initiation of some foreign conflict

without proper national support. This, of course, is an abuse not unique to Donald Trump in recent American history. Presidents of both parties have seized ever-greater claims on the power to take the country to war despite the fact the Constitution gives Congress—and Congress alone—the power to declare war. But in Trump's erratic and corrupt hands, the risks seemed even higher.

So when Trump ordered missile strikes on Syria in 2017 without any apparent legal authorization to do so, we sued. Because courts have rejected efforts of individuals to challenge the president's authority to direct military actions, our strategy was to expose the unlawfulness of the president's action in hopes of spurring legislative pushback and, ideally, reforms.

The litigation we filed demanded that the Administration release any and all legal analysis it had produced justifying the lawfulness of the Syria strike. And we demanded they do so immediately. We argued that further escalation could have been imminent and the public could only act to override further escalation if it could see the authorities the president was claiming to have. We won a crucial legal victory in federal court that established important precedent on the right of the public to have rapid access to this sort of information because, as the Court [wrote](#), "missile strikes cannot be undone." That [litigation in 2017 exposed the existence of a secret memo](#) outlining the Administration's view of its authority to launch a war without consultation with Congress.

Based on the revelation of that memo, we worked with the Senate Foreign Relations Committee to help them begin a series of hearings designed to reassert Congress's constitutional role as a check on any president's ability to unilaterally launch war.



We then worked with several Senators to [extract a commitment from Mike Pompeo](#) to disclose the memo during his confirmation hearing to be Secretary of State. That led the Administration to release its analysis, which elevated the debate over the president's warmaking powers. The subsequent debate helped start to create a heightened check on presidents' ability to launch similar attacks without informed democratic deliberation.

Bipartisan outrage at the Syria 2017 strike led Congress to enact a provision in the National Defense Authorization Act of 2018 which mandates that the Executive Branch release an annual report on the legal and policy justifications for the nation's use of military force. When the Trump Administration failed to comply

with that requirement, we [sued](#). Our lawsuit was [successful in forcing the Administration to finally release the overdue report](#), which we believe is the first time litigation like this has been used to force the release of such legal authorities.

And yet, notwithstanding some of those intermediate successes, Trump continued to initiate military engagements of dubious legality. Ultimately, what is needed is stronger legislation to restore the proper balance between executive and congressional roles with respect to warmaking. We are therefore working with a cross-ideological coalition that spans the gamut from Soros-connected entities to Koch-backed efforts to [call for reforms](#) and to enact updated war powers legislation with teeth.



In March of 2020, the House Rules Committee held a bipartisan hearing on how Congress could begin to reassert control over war powers, national emergencies, and related issues. That legislative effort was sidetracked by the COVID-19 pandemic. After President Biden engaged in similar missile strikes in Iraq and Syria, Congress renewed the push to restore Congressional power in these areas. In July 2021, Senators Chris Murphy, Mike Lee, and Bernie Sanders [introduced legislation](#) to restore Congress’s constitutional role over war powers, national emergencies, and arms sales.

By Using the Regulatory State to Quash Protected Speech

Another autocratic tactic adopted by Trump was his labeling of the press as the “enemy of the American People,” and more broadly, his use of the office of the presidency to quash dissent.

One tactic for quashing dissent we worried about is government harassment of—and retaliation against—dissenters, protestors, and those who are members of or associate with marginalized communities. In 2019 and 2020, we filed two major lawsuits to guard against Trump’s attempts to silence dissenting voices.

In the first of those two lawsuits, filed in July 2019, we represent Pastor Kaji Douša, an advocate for humane immigration policies whose religious beliefs call on her to minister to refugees. On a trip across the Southern border, Pastor Douša was detained and discovered that, because of her religious activities and activism, she had been added to a [special surveillance list](#) as part of a secret



We sued the Department of Homeland Security on behalf of Pastor Kaji Douša. On a trip across the Southern border, Pastor Douša was detained and discovered that, because of her religious activities and activism, she had been added to a secret DHS surveillance list of “Suspected Organizers, Coordinators, Instigators and Media.”

DHS operation ominously reminiscent of COINTELPRO. In the face of a clear threat against core First Amendment speech, we sued for a permanent injunction against the government to stop surveilling, detaining, interrogating, or acting unlawfully against Rev. Douša, both immediately and in the future, in retaliation for how, when, and where she exercises her religion. Our suit was [promptly backed by a coalition](#) of more than 850 religious leaders.

The case is ongoing but we’ve already seen impact—first, in [successfully moving for expedited discovery](#) to obtain documents demonstrating that the government targeted Pastor Douša for her protected First Amendment activity; and more recently, in [defeating the government’s motion to dismiss](#). In overcoming the government’s motion to dismiss, our case creates a legal precedent for future plaintiffs to draw upon in holding the government accountable for targeting and discriminating against them for exercising their rights. In particular, the ruling (which comes from a more conservative judge) elevates the simple but crucial argument that protecting core First Amendment rights is—and ought to be—an exercise in pro-democracy cross-partisanship.



In addition to the free exercise of religious rights, another cornerstone of a robust democracy is the right to dissent and protest. Following the police killing of George Floyd, in cities across the country, historic and lawful protests against police brutality and in support of Black Lives Matter were met with state violence. In particular, the city of Portland saw an unprecedented deployment of federal agents by the Department of Homeland Security. Those agents—dressed in and armed with military gear—took to the streets to tear-gas peaceful protestors, harass and intimidate journalists, detain protestors in unmarked vehicles, make unlawful arrests without probable cause, and generally use violence to quash constitutionally protected speech.

So we sued DHS. In the [complaint we filed](#) on behalf of Don't Shoot Portland and several Black Lives Matter protesters, we argued that federal law enforcement officers were exceeding the limits of their authority—in part because they were violating the First and Fourth Amendment rights of protestors, but also because their actions far surpassed the limited functions that Congress has authorized federal law enforcement officials to fulfill. After all, as we noted, there is no federal police force: general police power is very clearly reserved to states and their subdivisions. As such, the violence on the part of federal agents in Portland reflected a clear case of government overreach.

What is more, the unlawful policy originated from an unlawful source. As we [pointed out](#), DHS Acting Secretary Chad Wolf was unlawfully serving in his role: because he was neither nominated by the president nor confirmed by the Senate, his attempts to yield the power of that office violated the Appointments Clause of the Constitution. This was not a unique phenomenon in the Trump Administration, but rather a

Our lawsuit was filed on a Monday. By Thursday, Trump retreated.

regular occurrence that prompted a [broad body of our work](#) on the Appointments Clause and the Federal Vacancies Reform Act (FVRA), which provides a process for filling temporary vacancies in executive branch positions. Trump repeatedly abused the FVRA and we repeatedly challenged him on it, while also [proposing reforms](#) to avoid the same situation in the future. In this case, we argued that because Wolf was unlawfully serving in his role, his orders in Portland were null and void.

Our lawsuit prompted a [flurry of media coverage](#) that heightened the scrutiny on federal agents in Portland. That heightened scrutiny strengthened our hand. Our lawsuit was filed on a Monday; on Tuesday, we informed the Department of Justice that we would be filing for an emergency temporary restraining order to halt the federal operation in Portland and began negotiating with them over whether we would do so. By Thursday, Trump retreated and federal agents withdrew.

We were, of course, one of many actors fighting the Trump Administration's efforts to intimidate protestors in Portland—and across the country. It was a confluence of factors that forced Trump to retreat: external pressure from a successful lawsuit on behalf of journalists brought by the ACLU; pressure from the Oregon Governor and Portland city officials; action in Congress (where we helped Members craft their response); a lawsuit from the Oregon Attorney General; internal pressure in the form of

[leaked information](#) to the press and [internal investigations](#) within DOJ and DHS (which we [called for](#)); the public sentiment in favor of peaceful protests and in outrage toward the actions of federal agents, which was shaped in part by the many stories covering our lawsuit; and, ultimately, the commitment of the protestors to continue showing up and overwhelmingly practicing nonviolent methods. Yet, it was critical that when the Oregon Attorney General’s lawsuit was thrown out for a lack of standing, legal pressure should continue and originate from plaintiffs with standing to challenge the entire federal deployment and even the validity of Chad Wolf’s role in overseeing that deployment. Our lawsuit did exactly that—and when we sued, Trump retreated.

In addition to these efforts to safeguard the constitutionally protected speech of clergy and protestors, we also recognized the grave danger inherent in Trump’s claims that the free press was the “enemy of the people,” a statement he made [36 times on Twitter](#) throughout his presidency, in addition to some 1,300 tweets attacking news organizations. So, we fought back against his efforts to police the speech of journalists. In October 2018, on behalf of PEN America, we [brought a First Amendment lawsuit](#) against President Trump for his threats to use government agencies to punish media entities for their speech, such as his threats to block the AT&T-Time Warner merger because of his animus toward CNN and his threats to take antitrust and tax actions against Amazon and raise their postal delivery rates because of his animus toward



CNN journalist Jim Acosta, whose White House press credentials were revoked after he questioned the former President. We brought—and succeeded in—a case against Trump’s efforts to police the speech of journalists.

Jeff Bezos and *The Washington Post*. These threats of retaliation by the President, plus his revocation of the White House press credentials of journalists like CNN’s Jim Acosta, were meant to create a chilling effect forcing journalists to censor themselves for fear of retaliation by him or their employers. The former dean of the University of Chicago Law School [called the suit](#) “critical to preserving what our nation stands for,” and more than 200 journalists [signed a letter](#) supporting our case shortly after its filing.

In March 2020, a [federal court ruling](#) upheld PEN America’s standing to pursue a challenge to President Trump’s threats and acts of retaliation against journalists and the media. Then, almost a year later in February 2021, we came to a [settlement agreement](#) that leaves that federal court ruling intact. This decision forms a pathbreaking precedent providing accountability for officials who use the power of government to exact reprisals against the press. As a member of our team [noted to the Associated Press](#), “We’d be naive to think that no future political candidates would consider emulating him [Trump], which is why this case was such a crucial marker. Would-be imitators now know that this anti-First Amendment behavior will be challenged and stand a strong chance of being held to account.”

By Abusing the Pardon Power

Finally, there was the risk that Trump would use the pardon power to warp the separation of powers and make it much harder to hold the president accountable. Princeton Professor Kim Lane Scheppele warned us of this danger in the summer of 2017. Scheppele had spent roughly a decade

living in Hungary studying Orban and Putin and explained to us a common dynamic of these autocrats: they find a legitimate constitutional power, she said, that they can wield unilaterally and with very few checks on it, and then they blow it up beyond all intent or proportion until it becomes a tool of corruption. A week after that conversation with Professor Scheppele, Trump pardoned former Arizona Sheriff Joe Arpaio.



After Trump pardoned former Arizona Sheriff Joe Arpaio, who was convicted of criminal contempt of court for refusing to follow a court order that he stop racially profiling Arizonans, we challenged the constitutionality of the pardon.

If the president orders law enforcement officers to violate your rights, and you go to court to vindicate your rights and the court agrees with you, and then the law enforcement official continues to violate your rights, but the president pardons them when the court holds them in contempt, then do you really have rights at all? This was the problem we set out to challenge.

The Arpaio pardon was troubling for several reasons. Arpaio was an open bigot who had been convicted of criminal contempt of court for refusing to follow a court order that he stop racially profiling Arizonans. Politically, Trump's pardon to him was red meat for his white supremacist base. And it seemed to signal to others in or out of law enforcement that if they engaged in openly racist practices, the president would have their back.

But there was another problem with the pardon beyond its facial racism and ugliness. Private litigants had sued Arpaio to enforce their constitutional rights—rights the courts found Arpaio to have violated. Arpaio chose to ignore the court and kept violating the law. For that, he was convicted of contempt.

This is how courts enforce their orders if defendants violate them. Trump's pardon took away the court's ability to force Arpaio to comply with its orders. If the President can use the pardon power to neuter a court's ability to enforce its orders, he could conceivably cancel constitutional rights.

Think about it: if the president orders law enforcement officers to violate your rights, and you go to court to vindicate your rights and the court agrees with you, and then the law enforcement official continues to violate your rights, but the president pardons them when the court holds them in contempt, then do you really have rights at all? This was the structural problem with the Arpaio pardon, and it vindicated Professor Scheppele's concerns. Trump also clearly understood the ramifications, as he would later reportedly order Acting DHS Secretary Kevin McAleenan to [break the law while promising to pardon him should he get caught](#).

Challenging the Arpaio pardon, however, would not be easy. When Trump pardoned Arpaio, the conventional wisdom was that the pardon power was unlimited. As *The New York Times* [reported](#) of the Arpaio pardon: "it was almost certainly lawful. The Constitution gives presidents extremely broad power to grant pardons." *USA Today* [reported](#) that the president's power to pardon is "absolute." Changing the conventional wisdom would be difficult, even though Trump had demonstrated a logical flaw in this school of constitutional interpretation. It simply couldn't be the case that the pardon power carried within it the power to swallow the entire rest of the Constitution.

Yale Law Professor Jack Balkin [had an article in *The Atlantic*](#) several years ago entitled "From Off the Wall to On the Wall." The article broke down the

phenomenon by which “a legal argument that most scholars thought was crazy [gets] taken ... seriously so quickly.” According to Balkin, “The history of American constitutional development, in large part, has been the history of formerly crazy arguments moving from off the wall to on the wall, and then being adopted by courts.”

We determined that we needed to run the Balkin play. But we needed to be cautious about it. The mercy purpose of the pardon power is a critical one, and whatever we did, we didn’t want to harm the beneficial aspects of the pardon power; but we had to constrain the nefarious ones.

Thankfully, at about this time, there were three serendipitous developments that assisted our efforts. First, Northwestern Law Professor Martin Redish penned an op-ed in *The New York Times* laying out the case for why the Arpaio pardon was unconstitutional. Second, Arpaio put his own case back in court by asking for his conviction to be removed from his record based on the pardon. And shortly thereafter, Ron Fein at the nonprofit group Free Speech for People reached out to us with a proposal to try to enter the Arpaio case to have the pardon invalidated. We agreed.

We knew success in court would be a long shot, but we saw the case as an opportunity to elevate a debate about the limits of the pardon power, just as we had used litigation in the emergency powers and war powers contexts to create a platform for legislative action.

With Free Speech for People, we assembled a coalition and filed an [amicus brief](#) in the District Court making the argument that the pardon was unconstitutional. Citing the pardon, the Justice Department refused to defend its conviction or oppose Arpaio

any further in the case. So in our [briefing](#) we also pointed out that the Court was required to appoint a special prosecutor pursuant to Federal Rule of Criminal Procedure 42. According to Rule 42, any court that wants to initiate a contempt proceeding can ask the DOJ to do so and, if the DOJ declines to follow through, can appoint a special prosecutor to initiate such a case itself. The Ninth Circuit Court of Appeals [agreed with our argument](#) and [appointed a special prosecutor](#).

All of this litigation activity gave us a springboard for generating media coverage of the issue. And following the Balkin playbook, we got legislators to weigh in: a group of House Members filed an [amicus brief](#) in the case in support of our argument, and [we ourselves testified before Congress](#) on the pardon power.

All of this debate and coverage of the pardon power laid the groundwork for what would become one of the more controversial issues of the Trump presidency. As Trump issued more and more dubious pardons, reporters went back to the media coverage of the Arpaio pardon fight to inform coverage of these new pardons. And since we had engaged a live debate about the Arpaio pardon that was still working its way through the courts, that meant later media coverage of Trump pardons had to acknowledge that there were open, controversial questions about the pardon power’s breadth.

The coalition from the litigation evolved into a coalition that would then work with Rep. Adam Schiff to support the Abuse of the Pardon Prevention Act. This legislation would later be included in the Protecting Our Democracy Act now teed up for passage.

Ultimately, the Ninth Circuit refused to remove the conviction from Arpaio’s record,

Whereas in 2017 the typical take was that the pardon power was ugly but unlimited and that the only remedy for distasteful pardons was impeachment, by 2020, there was a broad understanding that the pardon power did contain some limits.

they might be less brazen in their illegal behavior. And if Trump was unsure a self-pardon or a pardon for family to protect himself would hold up in court—or he believed issuing one would be like waving a matador’s cape in front of prosecutors—might that have tipped the balance in persuading him not to pardon himself or his family? We’ll never know for sure.

and didn’t answer the question of whether the pardon was constitutional. But at that point the case had served its purpose. Whereas in 2017 the typical take was that the pardon power was ugly but unlimited and that the only remedy for distasteful pardons was impeachment, by 2020, there was a broad understanding that the pardon power did contain some limits. When Trump pardoned Steve Bannon, the co-founder of the Federalist Society Steven Calabresi would [write](#) with Norm Eisen that “Mr. Trump’s midnight pardons of Mr. Bannon and his ilk are unconstitutional and, if reviewed by courts, should be set aside.”

So with Trump’s presidency in the rearview, replete with self-protective and other dangerous, corrupt pardons, a live question exists: will these all stand up in court? In 2017, the answer was clearly yes. Today, it’s less clear. Time will tell. Just the fact that there’s now some doubt when previously there was none may lead to some changed behaviors. If people expecting a pardon aren’t sure it will hold up in court,

Looking at the set of Trump tactics above that we fought tooth and nail against, it's easy to see how things could have been worse. We frame our work over the past four years around these tactics because in many ways, the counterfactuals are still just that: frightening possibilities to consider and guard against, but a cautionary story of *what could have been rather than what came to be*.

That the counterfactuals did not come true is due to the hard work of so many. We owe it to the next generation to make it harder for another autocrat to get this far, and easier for We The People to stop them.

We can exhale only briefly. The global march of authoritarianism shows no signs of slowing down. Autocrats run two of the world's four largest democracies and populists of varying shades in Europe have built up significant electoral forces in Italy, Hungary, France, Germany, Austria, Spain, the UK, Poland, Estonia, Sweden, the Netherlands, Denmark, and Finland. Democracy is neither preordained nor self-executing, and it is presently [in its most fragile state in decades](#)—perhaps longer.

A violent white supremacist strand in American political history makes the United States particularly susceptible to the creeping authoritarianism that has dismantled democracies across the globe in the 21st century. Donald Trump's term in office, through the events of January 6, showed the dangerous brew that results from mixing the nativist U.S. authoritarian strand with the global trends toward modern strongmen. In fact, Trump and his allies undermined our core democratic institutions at a faster rate than Recep Erdoğan in Turkey or even Vladimir Putin in Russia. Recall in those cases that those leaders were seen as potential reformers when they first took office. Erdoğan was expected to lead Turkey into

Democracy is neither preordained nor self-executing, and it is presently in its most fragile state in decades—perhaps longer.

the European Union and Putin was going to carry on Yeltsin's democratic reforms. In both cases, it took several years before their dictatorial characters became clear. Trump's abuses began from his first week in office.

We now have a once-in-a-generation window to pass reforms to blunt the tide of authoritarianism, prevent a Trump 2.0 from rising, and refashion the structures of our republic to make our democracy more equitable and accessible. We must move quickly to take advantage of this narrow window; the fate of our democracy hangs in the balance.



**Our Team
and Culture**

Our Team



70+

Best-in-the-business professionals, including lawyers, policy experts, legislative advocates, media strategists, data analysts and technologists

15+

Staff who have served in high-level positions in the federal executive, including the White House

12+

Staff who have served in high-level political campaign roles

15+

Staff who have served in the senior ranks of leading nonprofit, political, or media organizations

10+

Staff who have served as high-level aides to Congressional offices from both parties

3

Staff with PhDs ranging from electrical engineering (machine learning) to international democracy promotion

16+

Former clerks for federal courts

1/3

People of color

50%

Non-male identifying

Our Alumni



5

Members of our team and board entered the Biden Administration, including our co-founder Emily Loeb

87

Harvard Law School students have participated in our Democracy and the Rule of Law Clinic



These folks are worth their weight in gold.

— Jennifer Rubin, *Washington Post* columnist

Protect Democracy fields a team of energetic and creative advocates who are committed to promoting democracy and the rule of law at a time when both are under assault from malign forces.

— Michael Chertoff, Chairman of the Chertoff Group and Second United States Secretary of Homeland Security

Our Work



Protect Democracy really amplifies the organizing on the ground. Working with them is like two pieces to a puzzle that complement each other. They take the litigation side of our organizing work and it's another pressure point towards making a stronger democracy.

— Angela Lang, Executive Director, Black Leaders Organizing for Communities

100+

Legal actions taken since inception, leading to nationwide injunctions of anti-democratic Trump Administration policies, expansions of voting rights protections in federal case law, and stronger legal doctrines against presidential abuses of power

3000+

Alumni of the DOJ, White House, DOD, DHS, CDC, EPA, and more, mobilized to speak out about ongoing authoritarianism

1000+

Media stories raising awareness about threats to our democracy

1

Presidential election saved*

** In partnership with a massive coalition of organizations, patriotic actors, and We The People*

Our Culture

Protect Democracy carries out all of our work in a manner consistent with our culture principles and in service of our mission. When in doubt on how to act in a given situation, small or large, we consult our culture principles. By embracing and embodying our culture principles, we have built a team that values collaboration, constant feedback, excellence, efficiency, and integrity.

- 1.** Mission is the metric
- 2.** Collaborative culture and hierarchical decision making
- 3.** Cherish feedback and give feedback responsibly
- 4.** Commitment to excellence
- 5.** Strength in diversity
- 6.** Work-life balance is a professional responsibility
- 7.** Walk the talk with integrity and humility
- 8.** Team care and kindness
- 9.** Panic is the enemy
- 10.** We can't win if we don't play



8.92

Average score out of 10 provided by our employees over the last year in answer to “I would recommend Protect Democracy as a great place to work.”



I have worked with hundreds of nonprofits and I've never seen a better-run organization than Protect Democracy. In fact, part of the reason I sit on Protect Democracy's board is so that I can learn from the organization's approach and share those lessons with others. From the rigor of Protect Democracy's hiring practices to the way the organization invests in growing its people to its excellence in execution to its commitment to constant improvement and the transparency and integrity of its culture: Protect Democracy is as effective an organization as you'll find in any sector.

— Jerry Hauser, Founder of The Management Center



Why This Fight Is Worth Waging

by Cecilia Muñoz

Why This Fight Is Worth Waging

Friends of democracy,

We have our work cut out for us.

In *How Democracy Could Die in 2024, and How to Save It*, Steven Levitsky and Daniel Ziblatt lay out a troubling diagnosis of the threats to American democracy. For many of us, *How Democracies Die* confirmed what we hoped not to be true: that the slow breakdown of democracy isn't just something Americans shake our heads over as it happens in other parts of the world; it can happen here too. I am the daughter of immigrants from a place where democracy has a precarious hold; I dared to believe that the United States was different. Steven and Daniel's assessment that "the threat to democracy today is worse than we anticipated" is a red alarm for this American, as it should be for all of us.

Indeed, the threats we face are severe and metastasizing across the nation. That's what led to the founding of Protect Democracy, where I am a Board Member, four years ago. This young organization, along with the broader democracy movement of which it is a part, faces a daunting set of challenges. To borrow one of the organization's metaphors for the work ahead of us: we must hold up the cracking wooden ceiling beam of our democracy to prevent

the ceiling's imminent collapse; then we must replace the cracking wood with sturdier steel; and finally, we must fix the structural flaws that allowed termites into the foundation in the first place.

Protect Democracy has tasked itself with addressing all three of these phases: ranging from immediate emergencies, like the acute threats to the integrity of our elections, to the generational question of how to mend an ever more frayed social and cultural fabric and deliver on the promise of the truly multi-racial democracy that we've never achieved.

This requires a Herculean effort, but as Steven and Daniel point out, "Americans have re-founded our democracy before."

Though the situation is acute, I take great hope in the work that has been done these last four years by Protect Democracy and the countless other individuals, organizations, and coalitions that fought back against Donald Trump's efforts to subvert our system of government. Since its first days in late 2016, Protect Democracy has focused on *preventing American democracy from declining into authoritarianism*—a mission that I never dreamed would be a necessity in this country, but which, as we saw in the weeks between Election Day and Inauguration Day,

We have a chance to reinvent our democracy—making it stronger and more perfect than before—and save it in the process. If you are engaged in the debates of our times, no matter what the issue is that moves you, this is your issue too.

proved absolutely prescient. For now we have succeeded in that mission. There is so much more to do.

As proud as I am of Protect Democracy's work, I am equally proud of the way that the team does it. As I often tell Protect Democracy's partners and prospective employees, I would be hard pressed to find a more thoughtfully led organization or a better example of the power of leading with the same values that we strive to uphold in our public life. By leading with respect and humanity, the organization is able to foster effective and unlikely coalitions, attract and retain top-rate talent, and ultimately, make an outsized impact.

I take hope also in what we as a nation can be if we succeed in this mission. To borrow from the Civil Rights movement, in the face of adversity, we must keep our eyes on the prize: we seek to *protect* democracy so that we can *perfect* it and create the thriving multi-racial democracy to which we have long aspired.

I have been fortunate to dedicate a career to working on delivering the promises of a thriving democracy: of equal justice under the law; of the opportunity to do meaningful work and earn enough of a living to sustain a family; of policies that are made by and for thriving

communities; and of access to the kinds of care and support that humans need. The last four years have taught me that to make the progress necessary on these issues, we must also commit to fortifying our democracy. I now understand more deeply that, for democracy to survive, it needs to demonstrate that it can deliver for people's needs more effectively than authoritarianism ever will.

To ensure that our experiment in self-government survives, those of us who work on equity and justice, freedom and human rights, and opportunity and economic mobility must recognize that our democratic institutions are not luxuries that we can leave for someone else to protect. If they crumble under their current threat, our hopes of a more just and equitable society crumble with them. We must all take up the cause of strengthening our democracy to have any hope of building the flourishing future that the United States is capable of, which can in turn be a beacon to the world.

We are at a turning point which is both a challenge and an opportunity. We have a chance to reinvent our democracy—making it stronger and more perfect than before—and save it in the process. If you are engaged in the debates of our times, no matter what the issue is that moves you, this is your issue too. We have work to do.



*“They are innovative, imaginative,
energetic and extremely effective.”*

— **Ben Wittes, *Lawfare*
Editor-In-Chief**



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