



# Day One is for Democracy

A Blueprint for the Next Administration

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The changes to move toward the democracy we need will take time, **but our president can jumpstart that process** by dedicating Day One of his presidency to strengthening our democracy.

Building on the tradition of presidents setting the all-important “tone from the top” by making one of their first orders of business issuing an ethics executive order, we have identified a number of actions a president could take to strengthen our democracy from day one.

These ideas cross all the demands of our coalition, and are laid out below, along with a short list of critical presidential appointees who can make sure they are carried out at every level of the executive branch.



DECLARATION FOR  
AMERICAN DEMOCRACY

# Foreword



Over 200,000 Americans have died from COVID-19 pandemic. The stock market is soaring as millions of Americans remain out of work and face eviction. It's no wonder the public has lost faith in government. They see a system that rewards special interests and big donors and leaves everyone else behind.

To restore public faith in our democratic institutions, we must act boldly and comprehensively to ensure everyone has an equal say, no matter where they come from or how much money they have.

House Democrats jump started this process in 2019 with the passage of the For the People Act (H.R. 1), the most comprehensive package of democracy reforms to pass either chamber of Congress in a generation. The For the People Act would create the 21st century democracy Americans deserve. It would end the dominance of big money in politics and empower small-dollar donors, protect and expand the right to vote, and ensure public officials are working in the public interest.

The policies included in H.R. 1 would reduce corruption in politics, create a more open and transparent government, and go a long way toward restoring faith in our government and elected officials. It passed the House with unanimous Democratic support and its Senate companion (S. 949) counts all 47 Democratic Senators as cosponsors.

Passing bold, comprehensive reforms to our democracy is a top priority for all of us and--in conjunction with enacting emergency legislation to combat the coronavirus--the For the People Act (H.R. 1) must be a first priority for the next president.

Additionally, there are many executive actions and appointments the next president can make to set a standard for ethical, accountable government. While these actions would not address many of the reforms set forth in H.R. 1, the recommendations below would set an important "tone from the top" that the next administration is committed to creating an ethical and transparent government.

# Executive Summary

The Declaration for American Democracy has six core demands for our democracy:

- Our democracy must include the freedom to vote and have that vote counted.
- Our democracy must be honest.
- Our democracy must have meaningful participation.
- Our democracy must provide transparency into our government and our elections.
- Our democracy must be responsive.
- Our democracy must uphold checks and balances.

Our mission is to create and pass a series of fundamental reforms to transform our current system into a strong democratic system that reflects, responds to, and represents us. No single reform or single issue area can achieve this, and certainly no president can do this alone. However, the president has the power to take critical steps toward these goals, and in so doing can set a tone from the top that carries throughout the administration and beyond.

These actions would not be a substitute for major legislation like H.R. 1, the For the People Act, which the next president should support and sign into law if passed. But major improvements to our democracy don't need to wait for major legislation.

While we lay out a number of actions in this document, each of which we believe would have real significance, the most impactful set of actions would be these:

- Direct federal agencies to assist in voter registration.
- Restore a meaningful ethics pledge.
- Promise not to solicit super PAC contributions or appear at super PAC events.
- Publish White House visitor logs.
- Combat the revolving door.
- Disclose and reassess Office of Legal Counsel opinions.

If the next president does this, or more, on Day One, these actions will lay the foundation for the transformation of American democracy that is critical to our ability to make progress on all the other issues - justice, environment, economy, education, and many more - that we know we need to address. We also know that the president cannot take even these steps alone; that is why we have identified the presidentially-appointed positions whose work is critical to strengthening our democracy, and identified key characteristics we believe the president should look for in a person to fill that role.

# Our democracy must include the freedom to vote and have that vote counted.

## 3 steps toward protecting voting rights to take on Day One:

### ■ Direct federal agencies to assist in voter registration.

The confusing, sometimes onerous process of registering to vote is one of the most significant barriers to voting. As a result, voter registration rates are dismal. During the November 2018 elections, only two-thirds of the voting-eligible population was even registered to vote. That means that in the 2018 election, about 75 million U.S. citizens age 18 or older did not possess the basic prerequisite for voting. Registration barriers do not affect communities equally. Voter registration today, as always, disproportionately blocks would-be voters of color—especially Black, Latinx, and Indigenous voters—from exercising their fundamental right to vote.

The next president should require that certain federal agencies provide voter registration services to their clients. The selected agencies should comprise those whose programs serve populations that are less likely to be registered than the general population, such as the Social Security Administration (Supplemental Security Income and Social Security Disability Insurance), the Department of Health and Human Services (Indian Health Service), Citizenship and Immigration Services (at naturalization ceremonies), medical and homeless facilities of the Department of Veterans Affairs, and military pay/personnel offices.

### ■ Direct the Justice Department to prioritize enforcement of the NVRA and the VRA.

The Justice Department has played a critical role in protecting Americans' right to vote through enforcement of voting statutes, such as the National Voter Registration Act of 1993 and the Voting Rights Act of 1965. Enforcement of these statutes has lagged badly in the last four years. The next president should direct the Attorney General to reinvigorate the Justice Department's enforcement of voting rights statutes.

### ■ Make federal cybersecurity expertise usable for state and local election officials.

Like other infrastructure, election infrastructure is subject to cybersecurity risks; in 2016, Russia targeted election systems in all 50 states. While states and localities have individually worked to reduce these risks, the federal government can and should help bring all these protections closer to maturity. The next president should direct the National Institute of Standards and Technology to apply its expertise in developing voluntary cybersecurity guidelines for other types of infrastructure to doing the same for election systems.

# Our democracy must be honest.

## 5 steps toward an honest democracy to take on Day One:

### ■ Restore a meaningful ethics pledge.

In recent administrations, presidential appointees have agreed to abide by ethics requirements beyond those codified in statutes and regulations as a condition of their employment. The next president should capitalize on this longstanding tradition and design a strong ethics pledge, direct the White House Counsel's office to ensure that pledges are signed, disclose to the public who has and has not signed them, disclose to the public who has received waivers (if applicable) and why, and ensure that they are enforced if they are violated.

### ■ End executive branch nepotism.

When those in power choose to give power or favorable treatment to relatives who may be more loyal to them than to the constitution, the public gets the worst of both worlds: a government that doesn't work as well as it should and fewer opportunities to do anything about it. In the late 1960's, Congress passed the federal anti-nepotism statute, sometimes referenced as the "Bobby Kennedy law" because it came not long after President John F. Kennedy appointed his brother as attorney general. On the first day of President Trump's term, he appointed his son-in-law Jared Kushner to a White House position, in obvious violation of the spirit of the anti-nepotism law, and arguably in violation of the letter of the law. However, in what would be the first of many such instances, the Justice Department's Office of Legal Counsel issued an opinion allowing the president to avoid this law - and throughout President Trump's term, Kushner's failures and ethical lapses have provided an unfortunately clear picture of why anti-nepotism laws exist.

The next president should direct the Justice Department to rescind its opinion that the president and vice-president are not bound by the anti-nepotism law and should direct all parts of his administration to strictly comply with the law.

### ■ End ethics loopholes for outside advisors.

From time to time, it is helpful to the federal government to seek the expertise of those outside the government without hiring them as permanent employees or contractors (which would generally require them to leave their other jobs). Federal law allows agencies across the government to hire experts like these on a part-time basis as "special Government employees." These employees are subject to some, but not all, of the same ethics rules as other government employees, including the criminal conflict of interest statute that prevents them from participating in matters in which they have a personal financial stake. However, in some instances, the Trump administration circumvented these principles and involved outside advisors without meeting these basic requirements, such as when internal emails revealed that three members of President Trump's Mar-a-Lago club appeared to have directed some activities of the Veterans' Administration.

The next president should direct his administration to ensure that any outside advisors comply with ethics rules before they become involved in advising the government.

# Our democracy must be honest. (contd.)

## 5 steps toward an honest democracy to take on Day One:

### ■ Keep politics out of civil service.

The Hatch Act is a federal law that prohibits federal employees from engaging in certain political activities while they are on duty or in the workplace. Although the U.S. Office of Special Counsel (OSC) is generally empowered to enforce the Hatch Act's restrictions on partisan political activity by government employees, it must rely on the president to take action against senior White House aides and most political appointees. For example, when OSC found that Kellyanne Conway twice violated the Hatch Act, it recommended she be fired; the White House took no action in response.

The next president should commit to releasing a public explanation if he decides not to follow the independent Special Counsel's recommendation in such cases.

### ■ Prohibit hiding financial interests.

The Ethics in Government Act of 1978, as amended, requires senior federal officials to publicly disclose personal financial interests in order to identify and prevent conflicts of interest that could arise from a multitude of major creditors, investors and customers whose identities are unknown to the public. The purpose of requiring senior officials to disclose their personal financial interests is to instill “confidence in the integrity of the Federal Government” and to demonstrate “that they are able to carry out their duties without compromising the public trust.” Currently, public officials are permitted to transfer assets into trusts controlled by close associates and family members, limiting the disclosure to the existence of the trust rather than the assets it holds. This practice has allowed senior officials to circumvent the spirit of the requirement by avoiding disclosure of significant financial interests, rendering the disclosure meaningless for purposes of identifying and preventing conflicts of interest.

The next president should commit to requiring that any member of his administration who is a beneficiary of a discretionary trust disclose all of its holdings.

# Our democracy must have meaningful participation.

## 5 steps toward meaningful participation to take on Day One:

### ■ Pledge Not to Solicit Super PAC Contributions or Appear at Super PAC Events.

Super PACs now regularly operate as shadow campaigns, offering the wealthiest Americans opportunities to buy political influence that are not available to the average citizen. President Trump and senior administration officials have routinely appeared at fundraisers for super PACs or offered privileged access to big super PAC donors. Leaked recordings showed President Trump attending an intimate super PAC dinner with six-figure donors, each of whom had the opportunity to bend Trump's ear on policy issues. Average Americans can't afford six-figure super PAC donations and don't get that same opportunity to have their voices heard.

The next president should declare that neither he, nor the vice-president, cabinet officials, nor their surrogates will appear at super PAC fundraisers or other super PAC events, and will not solicit contributions for super PACs.

### ■ Create a Blue-Ribbon Commission to Recommend Nominees for the Federal Election Commission (FEC) who are committed to the agency's mission.

The FEC is charged with enforcing and administering anti-corruption campaign finance laws, such as those requiring transparency in political spending. But it is failing at that mission—and the failure of the FEC to enforce campaign finance laws has resulted in an explosion in secret spending and our politics increasingly rigged in favor of wealthy special interests.

The FEC is led by six Commissioners nominated by the president, no more than three of whom can be from the same political party. Over approximately the past decade, Senate Majority Leader Mitch McConnell and other political elites have put forward FEC nominees who are ideologically opposed to campaign finance laws and their enforcement. Although polls show that voters overwhelmingly want the FEC to take a more active role enforcing campaign finance law, McConnell's FEC Commissioners largely refuse to enforce the law against anybody, Democrat or Republican. Because the FEC needs the support of at least four Commissioners to enforce the law, just three Commissioners can paralyze the agency.

The FEC's structure needs a permanent overhaul, but the president can improve the agency by pledging to only nominate highly-qualified FEC commissioners who are committed to the agency and its mission.

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

# Our democracy must have meaningful participation. (cotd.)

## 5 steps toward meaningful participation to take on Day One:

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

The Supreme Court's disastrous decision in *Citizens United* opened up a loophole for foreign entities to influence U.S. elections via foreign-owned or -controlled corporations, or by secretly laundering funds through non-profit organizations (namely 501(c)(4)s and 501(c)(6)s) that keep their donors hidden from the public. Foreign political spending harms our national sovereignty and undermines Americans' right to self governance, weakening the democratic process by which Americans choose leaders and policies that reflect our priorities.

Despite the existing legal prohibition on foreign entities directly or indirectly spending money to influence U.S. elections, for several years, enforcement-oriented commissioners on the Federal Election Commission have been blocked from updating regulations to stop the type of inappropriate foreign influence unleashed by *Citizens United*.

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

- **Direct the Justice Department to place top priority on prosecuting election-law violations.**

After years of deadlock and dysfunction at the FEC, political actors and wealthy special interests routinely push the legal envelope with little fear of serious penalty. Any penalties that are assessed often pale in comparison to the amount in violation and the benefits that accrue from illegal influence-buying. As a result, the only significant enforcement of federal campaign finance law has come from the DOJ, which has jurisdiction over knowing and willful violations.

The next president should prioritize the nomination of committed FEC commissioners and direct the Department of Justice to prioritize the prosecution of knowing and willful campaign finance law violations, and seek top-of-the-range sentences for convictions.



# Our democracy must have meaningful participation. (cotd.)

## 5 steps toward meaningful participation to take on Day One:

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

The Foreign Agents Registration Act (FARA) is a key tool for preventing secret foreign meddling in U.S. politics—but DOJ's Inspector General in 2016 found rampant noncompliance with FARA's basic reporting requirements. In recent years, the DOJ has prosecuted several individuals for FARA violations, which has reportedly had some impact on compliance. A new administration should continue that trend.

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

# Our democracy must provide transparency into our government and our elections.

## 5 steps toward transparency to take on Day One:

### ■ Publish White House visitor logs.

Visitor logs provide meaningful insight into who the president and staff are consulting with on policy matters. Furthermore, these records have proven to be of tremendous value to the public in revealing key information about the potential influences that may shape a president's decisions and legislative proposals on critical issues.

Visitor log records should not be solely restricted to meetings that occur at the White House. President Trump has utilized various locations to conduct official business outside of the White House, including his Mar-a-Lago estate and other Trump Organization-owned properties. Visitor log records should be kept and available for public inspection from any location the president is meeting with individuals or groups that can potentially influence policy matters.

The president should direct that White House visitor log records be kept and made public. The logs should be clear and accurate such that the public can understand them. These records should contain the names of all visitors, the date and time of their visit, a brief and accurate description of the nature of the visit, as well as confirmation that the guests were actually present, and electronic copies of any materials relevant to the matter discussed that were left behind. They should be available via searchable database.

### ■ Publish ethics documents and agency visitor logs.

Gaps and weaknesses in transparency must be addressed to ensure that the public has access to information needed to identify undue influence and corporate capture, and to hold government bodies and officials accountable. Currently, for example, OGE compiles waivers granted to political appointees under the ethics Executive Order, but waivers granted to other executive branch employees from the ethics statutes are largely kept out of public view by the Designated Ethics Agency Officer (DAEO) of each division or agency in the executive branch. All DAEOs issuing ethics waivers should be required to put the waivers in writing and promptly file them with OGE for public inspection. In addition to ethics-related documents like ethics agreements; certification of ethics agreement compliance forms; recusal statements; waivers or exemptions granted; extensions granted to ethics-related deadlines; and records of agencies' approval of the acceptance of gifts from outside sources, the public also needs to know which non-governmental persons and entities agency officials and staff consult with on policy and other official matters.

# Our democracy must provide transparency into our government and our elections. (cotd.)

## 5 steps toward transparency to take on Day One:

The next president should direct the White House Counsel and the OGE Director to ensure greater public disclosure of key ethics-related information and records. These documents should be compiled in a central clearinghouse managed by OGE and made publicly available in an on-line searchable, sortable, and downloadable format. The next president should also require agencies to log and publicly report, on a regular basis, information related to meetings and engagement between agency officials and non-governmental persons and entities. These public logs should provide at least: (1) the names and affiliations of all meeting attendees, (2) the name of any entity they represent, (3) the date and time of the meeting, (4) a brief and accurate description of what was discussed, and (5) electronic copies of any materials relevant to the matter discussed that were left behind.

### ■ Fully staff and resource Freedom of Information Act (FOIA) offices across the executive branch.

The Trump administration has been withholding an inordinate amount of information under FOIA. Another indicator of problems is the rise in lawsuits stemming from agencies' responses (or lack of responses) to FOIA requests. In 2017 the FOIA Project reported a "dramatic rise" in pending lawsuits. Anecdotal reports suggest that delays in receiving responses to FOIA requests and inadequate responses have led to the increase in litigation.

In January 2020 alone, federal district courts saw a total of 63 new FOIA lawsuits filed. Gaining access to government records has often become a frustratingly lengthy battle, and the problem seems to be getting worse rather than better. Agencies have long-standing problems administering the FOIA program, and one reason for this is a lack of staffing and resources. The next president must prioritize fully funding FOIA programs across the entirety of the executive branch as a commitment to transparency.

### ■ Require government contractors to disclose their political expenditures to the office of procurement.

Since the Citizens United decision, unlimited corporate political money has flowed into our elections. One way to combat that is by increasing the transparency of contractor donations to outside groups that spend in elections. By making this disclosure a requirement the White House would take a much-needed stand against the proliferation of dark money in elections. More immediately, an executive order would help ensure that Americans' tax dollars are used efficiently, and not as a currency for political favors.

The next president should issue an executive order requiring contractors vying for federal projects to disclose any contributions to candidates, parties or third-party political groups over a specific dollar amount in the two years prior to submitting the bid. The rule should apply to both companies and the individuals running them.

# Our democracy must provide transparency into our government and our elections. (cotd.)

## 5 steps toward transparency to take on Day One:

### ■ Ban use of auto-deleting apps.

The Presidential Records Act of 1978 requires that the United States shall reserve and retain complete ownership, possession, and control of presidential records. Unfortunately, Trump White House personnel have been using self-deleting message applications in violation of this records-preservation law even though an internal memo asked them to refrain from using them when conducting official White House business. Citizens for Responsibility and Ethics in Washington (CREW) filed a lawsuit for an order compelling the president and his staff to strictly comply with the 1978 Presidential Records Act, but a Washington appeals court concluded that it lacks the authority to enforce day-to-day compliance.

Though the court rejected the suit, one of the judges referenced Richard Nixon--saying he could only have dreamed of the technology at issue in this case: message-deleting apps that guarantee confidentiality by encrypting messages and then erasing them forever once read by the recipient.

The next president should issue clear guidance from day one that using self-deleting encrypted technology for official business violates the Presidential Records Act and will not be tolerated.

# Our democracy must be responsive.

## 6 steps toward a responsive democracy to take on Day One:

### ■ Combat the reverse revolving door.

When corporate executives and business lobbyists are appointed to key posts in federal agencies, which is known as the reverse revolving door, it can establish a pro-business bias in enforcement and policy formulation. Drawing on lessons learned during past administrations, reverse revolving door provisions should focus on preventing and managing conflicts of interest through recusal requirements linked to certain financial interests, including those of an appointee's former employers and clients.

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

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

### ■ Combat the traditional revolving door.

The traditional revolving door – government employees taking jobs in the private sector related to their government work – is a key mechanism through which corporate interests influence government decision-making. Even before an official leaves public service, the explicit or implicit promise of a high-paying private sector job can influence them and create a pro-industry bias in their official decision-making. The current approach is focused on imposing post-employment cooling off periods, but these rules are often too narrow and do not last long enough to protect the public interest.

The next president should prohibit all appointees from lobbying their former executive branch departments or agencies for a period of 5 years after leaving government service; and from lobbying certain executive branch officials for the remainder of the Administration. The next president should prohibit very senior appointees from lobbying any part of the executive branch or congress for a period of at least 2 years after leaving government service. For all cooling off periods, the term lobbying should be defined to include lobbying activities and strategic consulting, not just lobbying contacts.

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

# Our democracy must be responsive. (cotd.)

## 6 steps toward a responsive democracy to take on Day One:

### ■ Combat and address risks related to the acceptance of incentive payments.

The corporate practice of providing incentive payments, which are special financial rewards given to company executives who secure government positions, has become common practice among Wall Street banks in recent years. By using incentive payments, companies can encourage their executives to leave the company to go work in a government agency, thereby fueling the reverse revolving door. These bonuses, which can be equal to or substantially more than an official's government salary, can also encourage or solidify the former company employee-now government official's loyalty and impact the official's judgment when it comes to work on matters that could affect that previous employer. While changes to the law may be required to fully address this issue, transparency and recusal requirements can be effective stopgaps.

The next president should prohibit all appointees from accepting, at any time, compensation from a former employer or client that is specifically awarded for entering government service. This should be accompanied by a transparency element, requiring appointees to publicly state in their Certification of Ethics Agreement Compliance form whether they have, or have not, accepted a banned payment. The next president should also prohibit appointees from participating personally and substantially in any particular matter affecting the financial interests of a former or current employer or client from which the appointee accepted compensation specifically awarded for entering government service. This recusal requirement should not be limited to the narrow sub-category of "particular matters involving specific parties," but rather should cover all "particular matters."

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

To complement substantive improvements regarding executive branch ethics, a public cabinet level meeting on ethics should be established. A public meeting of this sort would act as an issue forcing event within agencies and would facilitate lesson sharing and cross-pollination of ideas across different agencies on practical implementation of ethics requirements. It would also foster greater transparency and create a key opportunity for civil society and the broader public to put pressure on agencies or appointees that are falling short on ethics. All of these elements combined would help to trigger a "race to the top" on ethics within the executive branch.

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

# Our democracy must be responsive. (cotd.)

## 6 steps toward a responsive democracy to take on Day One:

### ■ Establish a People's Lobbyist Office.

There is currently no government body focused on tracking or countering the capture of or undue influence over public bodies and government officials by industry and other special interests. To fill this gap, a new public body should be established, which could have multiple functions and serve various roles, all aimed at protecting against regulatory capture and addressing the prioritization of corporate interests above the public good that can result. For example, it could house information about agency meetings with non-governmental people and entities and could be tasked with creating and managing a government-wide public database of senior officials who go through the revolving door. It could also act as a watchdog, responsible for monitoring and identifying instances of capture and/or providing neutral analysis on the impacts of agency decisions on the public as compared with corporate interests. While additional thought and analysis would need to be conducted to determine the contours of this office's role, it is clear that a strong protector of the public interest is needed to counter corporate influence and ensure our democracy is responsive to everyday people.

The next president should establish an independent, central body within the executive branch that functions as a "regulatory capture cop" or a "people's lobbyist office."

### ■ Prohibit the acceptance of gifts from lobbyists or lobbying organizations.

Corporate interests may seek to influence federal officials through gifts, such as meals and tickets to events. Current law does regulate the gifts that executive branch employees may and may not accept, but there are many exceptions that, in practice, dramatically reduce the scope of the regulation.

The next president should prohibit appointees from accepting gifts from any lobbyists or lobbying organizations (regardless of which government bodies they lobby) for the duration of the appointee's service. This prohibition should largely replicate previous lobbyist gift bans but should go further by addressing the issue of travel paid for by lobbyists and lobbying organizations, which is a highly valued gift.

# Our democracy must uphold checks and balances.

## 6 steps toward upholding checks and balances to take on Day One:

### ■ Disclose and reassess Office of Legal Counsel opinions.

The Office of Legal Counsel (OLC) is a relatively unknown but incredibly influential office within the Department of Justice. It serves as the in-house legal expert for the executive branch and provides formal legal analysis considered to be binding on the executive branch. For example, an OLC opinion effectively prohibited Special Counsel Mueller from indicting, and therefore from fully investigating, the conduct of President Trump. As legal counsel to the executive, OLC is naturally biased in favor of helping its client achieve its goals through legal analysis. Although OLC has made some strides towards openness, OLC opinions are not consistently released to the public. In addition, the heavily redacted lists that the OLC provides in response to Freedom of Information Act requests leave out any classified opinions, making it impossible to tell how many there are. Without transparency, these opinions also permit the executive branch to avoid congressional, judicial and public scrutiny of the reasons for its actions.

The next president should direct OLC to publicly publish all unclassified final opinions and publish an unclassified summary of any final opinion that cannot be published in full to protect properly classified information. The next president should also direct the Attorney General to conduct a review of all OLC opinions that implicate separation of powers issues, and to withdraw any opinions that risk serious executive branch overreach or substantially hinder oversight of the executive branch.

### ■ Transparency for OMB apportionment decisions.

When Congress appropriates funds, the White House's Office of Management and Budget (OMB) creates and issues a plan on how executive branch agencies shall use these budgetary resources. These plans are called apportionments and are legally binding on the agencies tasked with administering and executing the laws enacted by Congress. As OMB issues these apportionments, there is little to no transparency on how these decisions are made. OMB's directives usually come in the form of special footnotes that accompany a standard apportionment and are often used to influence the time frame of when and how agencies spend the congressionally approved funds. Neither Congress nor the general public has access to these decisions, creating the potential for decisions that unconstitutionally contradict the express appropriations by Congress without any public scrutiny.

In January, the Government Accountability Office found that the Trump Administration illegally withheld congressionally approved funding to Ukraine for the purpose of Trump administration policy objectives, not for legitimate programmatic or technical reasons. Had OMB's apportionment been made public, Ukraine may have received their funding sooner, and the administration may have avoided an impeachment inquiry and trial.

The next president should direct OMB to publicly release all apportionment decisions without delay.



# Our democracy must uphold checks and balances. (cotd.)

## 6 steps toward upholding checks and balances to take on Day One:

### ■ Cooperation with Congressional Oversight.

The Constitution created three separate but equal branches of government. While the Constitution doesn't expressly grant Congress oversight authority, the Supreme Court unanimously found in 1927 that oversight is an implied authority of Congress. As the Court found, "a legislative body cannot legislate wisely or effectively in the absence of information." Congress' unique role of conducting oversight can only be done when the executive branch complies and cooperates.

The Trump administration has consistently obstructed congressional investigations. During the impeachment inquiry, the White House took the extreme and absolutist position that it would not turn over a single piece of paper or produce a single witness in response to congressional requests, and the president instructed executive branch officials not to cooperate. Each president going back to George W. Bush issued signing statements that aim to weaken laws empowering inspectors general and protecting whistleblowers, and thereby also weakening congressional oversight authority.

The next president should direct executive branch officials to comply fully with congressional oversight and direct the Department of Justice to rescind the opinions of the Office of Legal Counsel that narrowly interpret congressional oversight authority.

### ■ Use of the National Emergencies Act.

For the past century, presidents have used their vast authority during national emergencies—including powers to shut down communications facilities, seize property, organize and control the means of production, assign military forces abroad, and restrict travel. Presidents have been able to do this with essentially no congressional oversight or limit on how long the emergency could last.

The National Emergencies Act of 1976 (NEA) helped to bolster Congress' role and create protections against the abuse of emergency powers. However, the law has not worked as well as Congress intended. The one-year expiration period, which was supposed to be the default, has become the exception. There are more than 30 states of emergency in effect today, with the longest dating back to the Iranian hostage crisis of 1979.

The next president should commit to only using the National Emergencies Act and the corresponding emergency powers to address true emergency situations where either unforeseen or unexpected events require immediate action.

# Our democracy must uphold checks and balances. (cotd.)

## 6 steps toward upholding checks and balances to take on Day One:

### ■ Transparency of Prosecutorial Discretion at the Department of Justice.

The Department of Justice states that its mission is, in part, to “ensure fair and impartial administration of justice for all Americans.” Unfortunately, we have seen many examples of a double prosecutorial standard where wealthy or politically well-connected individuals receive preferential treatment from federal prosecutors often by petitioning DOJ headquarters (or “Main Justice”) to intervene and overrule the decisions of line prosecutors. Reviews of prosecutors’ decisions can strengthen the cases that the Justice Department brings, stop unmeritorious legal actions from moving forward, and ensure greater consistency in enforcement. But when defense counsel’s appeals to DOJ higher-ups lead to prosecutors downgrading charges, this perpetuates a system of unequal justice and improper interference in the enforcement of the law in favor of the rich and well-connected. A lack of transparency around the standards used to make these decisions and the frequency with which such situations occur compounds this problem.

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

### ■ Public Interest Balancing Test for Espionage Act Prosecutions.

The Espionage Act, a World War I-era law meant to prohibit spying for Germany and other adversaries, has been used with increasing frequency to prosecute individuals who leaked classified information to expose government wrongdoing - often after trying unsuccessfully to raise those concerns internally. Neither the Espionage Act nor the classification system were meant to be used to hide serious government wrongdoing but both can and have been abused for those ends.

The next president should direct the Department of Justice to balance the public interest in the release of classified information against the potential harms to legitimate national security interests before bringing any prosecutions under the Espionage Act.

# Future Appointees Critical to Our Democracy:

## ■ Director of the Office of Government Ethics

The OGE director oversees the ethics program throughout the executive branch, and will be a critical voice both in exercising the office's current authority and in working to strengthen the ethics program, including by advising Congress on legislative solutions and implementing them via regulation. When a vacancy arises, the president should choose someone with experience that would allow them to lead a strong, proactive agency, and should give particular consideration to someone with investigative or enforcement experience.

## ■ Ethics Advisor to the President ("Ethics Czar")

While the specifics may vary, we believe a senior advisor to the president focused on ethics can be particularly helpful in ensuring that the president's priorities are carried out within the executive branch. With the president's support, and in consultation with the White House Counsel's office, this person can help prevent risky situations from going unaddressed and becoming full blown scandals, can help ensure that the transparency measures that are critical to the ethics program are effectively implemented.

## ■ White House Counsel

The White House Counsel has a critical role in many issues any White House faces, including ethics issues involving the most senior government officials. The president should choose a White House Counsel who will take strong stances on ethics issues to protect the integrity of the office of the Presidency and, by extension, of our democracy.

## ■ Director, Presidential Personnel Office

Ethics issues don't just arise for very senior government officials; an ethical government requires that all appointees observe the principle that public service is a public trust. As one of the primary mechanisms for identifying potential hires, this office can also operate as the first line of defense against appointees with ethics issues. The president should choose a director who has the experience and knowledge to do both critical parts of this job.

## ■ Director, Office of Management and Budget

The Director of the Office of Management and Budget plays a key role in ensuring that leaders of executive agencies outside the White House are behaving responsibly. The president should choose an OMB Director who will facilitate, not undermine, accountability for agency personnel, who will help agencies take strides in meeting their transparency obligations, not hold them back from innovating.

# Future Appointees Critical to Our Democracy (cotd.):

## ■ Administrator of the Office of Federal Procurement Policy

This office can play an active role in ensuring that current transparency measures in federal procurement are effective, and can help find new solutions to address issues such as disclosure of federal contractor political spending and technological improvements to information disclosed. The president should choose an Administrator who has the knowledge and commitment to implement an executive order on federal contractors and to drive innovations in procurement transparency.

## ■ Head of the Inaugural Committee

The president should appoint a person who has the management and other skills needed to ensure that the inaugural funds raised are both spent and disclosed in a manner that avoids improper influence and reassures the public that the inaugural funds are not a source of corruption.

## ■ Commissioners of the Federal Election Commission

The dysfunction of the Federal Election Commission, and the needed changes to fix it, go well beyond the scope of an executive order. However, it must be emphasized that the president should nominate individuals who will put their constitutional oaths to uphold the law above personal ideological views.

## ■ Commissioners of the Election Assistance Commission

Similar to the FEC, the EAC has an even number of commissioners, and on key issues, they often deadlock 2-2. Split decisions potentially lead to states not having clarity on voting best practices, and voters may be left with conflicting information and even disenfranchised. When there are vacancies at the EAC, the president must nominate individuals who will protect and strengthen the right to vote for all eligible Americans, not try to restrict voting, as several recent commissioners have done.



DECLARATION FOR  
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