

To: Candidates for President of the United States  
From: Protect Democracy  
Date: June 2019  
RE: **Authoritarian Red Lines Candidates Should Avoid**

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Democracy is on the ballot in 2020. Protect Democracy has proposed policy reforms that candidates from all parties should embrace to strengthen and renew our democracy. Additionally, candidates should refrain from a race to the bottom where they answer the current president's authoritarian tactics with authoritarian promises of their own. Experts tracking the decline of democracy in countries around the globe identify this race to the bottom as one of the ways democracies die and authoritarians rise. **This memo identifies eleven "authoritarian red lines" – tactics that candidates should avoid on the campaign trail.**

Candidates should remind Americans we are fighting for our democracy. This can only be done if they themselves avoid the authoritarian rhetoric and tactics that the current president has embraced. A thoughtful approach to how candidates talk about issues can show Americans the stakes of this election for our democracy, remind us that we deserve better from our elected leaders, and delegitimize authoritarian tactics.

**Candidates for president should not:**

- 1. Threaten government enforcement agency action against a specific individual, media outlet, or company**
- 2. Threaten to defy an act of Congress**
- 3. Declare that, as president, they will refuse to execute or defend a particular law because they disagree with it on policy grounds**
- 4. Declare that, as president, they will refuse to be constrained by a particular law or part of the Constitution**
- 5. Threaten to bypass the Senate on appointments**
- 6. Threaten to restructure federal courts to achieve a particular outcome**
- 7. Promise to replace, ignore, or politicize portions of the civil service**
- 8. Lie or spread disinformation**
- 9. Cast unjustified doubt on election results or voter participation**
- 10. Condone, encourage or incite violence**
- 11. Solicit or accept offers of election interference from a foreign government**

Together, these red lines safeguard America's fundamental values: equal justice under law; a constitutional system of checks and balances; free and fair elections; and the right of all Americans to govern themselves.

## **Specific Tactics that Threaten Democracy, and How to Avoid Them on the Campaign Trail**

### **1. Candidates should not threaten government enforcement agency action against a specific individual, media outlet, or company.**

**What's at Stake — equal justice under the law:** In a healthy democracy, presidents do not shut down dissent by mobilizing law enforcement and regulators to target dissenters or political opponents. Our democracy cannot work if people are afraid to criticize the government, if the criminal justice system is politicized, or if powerful interests are able to avoid accountability by cozying up to people in power.

It is critical that candidates remind Americans that in a democracy, we can hold our leaders accountable and that, while there are consequences for breaking the law, there are no consequences for displeasing the president.

President Trump has repeatedly used official powers to punish perceived critics. For example, he urged raising postal rates on Amazon to punish Amazon's founder and the owner of the Washington Post, Jeff Bezos, revoked the press pass of CNN's Jim Acosta, and used the power of the Department of Justice to target political opponents. PEN America has filed a [lawsuit](#) against the Trump administration for First Amendment Violations based on the president's use or threatened use of the power of his office to punish journalists or news outlets for coverage he found unfavorable.

President Trump has also repeatedly threatened to direct, and has actually directed, the Department of Justice to investigate and prosecute his political opponents, including law enforcement officers and prosecutors who worked on the investigation into Russian interference with the 2016 election and allegations that Trump obstructed that investigation.

**A Better Approach — outline general enforcement policies that apply equally and without regard to political views or dissent, and pledge that specific criminal investigations will be handled by the Attorney General and career civil servants without White House direction or interference:** It is perfectly appropriate for candidates to reference general enforcement priorities they will bring to office, like taking a rigorous approach to policing antitrust violations or enforcing the laws against white collar crime. It is also appropriate for a candidate to declare that no one, including a sitting president, is above the law. The problem is when candidates target specific actors. For the same reasons, any promises to investigate illegality associated with the current Administration should be carefully framed. Voters should be reminded that the reason for investigating people in our justice system is not their political views, but rather the trail of evidence that has already come to light. Candidates

should promise to hand off these investigations to civil servants or a special counsel who can protect them from political interference.

**Learn more:** You can find more [information](#) about existing threats to independent law enforcement and how to combat this trend; our [proposals](#) for legislative reform that will codify in law the post-Watergate norms that long curtailed the imperial presidency; our [concerns](#) about potential White House interference in DOJ's decision to block the AT&T/Time-Warner merger; [PEN America's lawsuit](#) against the president; our [white paper](#) about constitutional limits on White House interference with law enforcement matters; and our ongoing [tracker](#) of the president's interference with the Department of Justice and independent law enforcement.

## **2. Candidates should not threaten to defy an act of Congress.**

**What's at Stake — the separation of powers:** In a healthy democracy, changes in law are made through legislation by the public's representatives and through regulations that allow for public comment, rather than unilateral commands from the chief executive. When presidents attempt to legislate via executive order, they subvert Congress, agencies, and the statutes that regulate agency conduct. This president's Travel Ban, Asylum Proclamation, and National Emergency Proclamation were all examples of this type of executive power grab.

Candidates have an obligation to remind the American people that Congress is a co-equal branch of government that they intend to work with, and to call on Congress to actually govern. This does not mean placating obstinate members of Congress who have made no secret of their unwillingness to solve public policy problems. It does mean articulating an inspiring policy vision in which Congress — and agencies operating according to the law — plays a role, and reminding the American people that their senators and representatives work for them.

Likewise, candidates should not promise to bypass Congress and declare national emergencies in order to solve long-standing problems. This normalizes an abuse of power that we have seen in this Administration. Indeed, authoritarian leaders famously manufacture national emergencies in order to instill fear, scapegoat perceived outsiders, and consolidate power.

**A Better Approach — use your platform to pressure Congress to act and to encourage Americans to do the same:** Candidates should call on Congress to act to solve public policy problems. To the extent candidates want to exercise regulatory authority permitted by existing law, they should be very explicit about why it's lawful to do so. For example, a candidate who wants to move the needle on gun control should inspire and encourage Americans to hold their Members of Congress accountable on the issue. A candidate who presses Congress to send gun control legislation to his or her desk as president reminds Americans that we are responsible for making change and shaping our democracy. Candidates may also ask agencies to review or revise relevant regulations consistent with the law. There is a substantial

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difference between asking agencies to exercise authority that Congress has delegated to them and simply bypassing Congress altogether.

Of course, presidents can use executive orders to constrain their vast authority and otherwise promote good governance reforms that will strengthen our institutions. We will release a subsequent memo on the range of executive actions that a new president could take to strengthen our democracy, without worsening the problem of executive power grabs.

**Learn more:** You can learn [here](#) about our lawsuit, *El Paso County v. Trump*, challenging the president's declaration of a national emergency at the Southern border.

### **3. Candidates should not declare that, as president, they will refuse to execute or defend a particular law because they disagree with it on policy grounds.**

**What's at Stake — the rule of law and separation of powers:** One feature of American democracy is that the Executive Branch is generally expected to execute the laws that Congress passes, even when he or she disagrees with them on policy grounds. And the Executive branch is expected to defend these laws in court, notwithstanding his/her policy objections. This separation of powers prevents the Executive Branch from running roughshod over Congress. The erosion of this fundamental principle is a sign of democratic decline and authoritarian-style approach to governing. For example, the Department of Justice, for policy reasons masquerading as constitutional justifications, is now refusing to defend large portions of the Affordable Care Act that no reasonable observer believes are unconstitutional. In other words, the President is seeking to nullify laws he doesn't like, displacing Congress's role as the institution that makes our laws.

For similar reasons, it would also be unlawful and inappropriate for a candidate to declare that her administration will not enforce a law based on policy disagreements. The Executive Branch can of course set priorities for *how* it enforces a law and exercise prosecutorial discretion where appropriate, but these are different from nullifying a law through non-enforcement. That type of executive power grab undermines the separation of powers.

**A Better Approach — engage voters in a discussion about enforcement priorities and legislative reform:** Candidates should convince Congress to revise or repeal bad laws — not just ignore them. Legislative solutions are more permanent and offer clarity and predictability for all Americans. A legal system that flip-flops every four years, with laws turning on or off based on who holds the presidency, violates the basic tenet that we are a nation of laws and that Congress holds the legislative power.

That said, all presidents face discretionary decisions about how to prioritize enforcement given limited resources, and conversations about priorities are conversations about values. To that

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end, a candidate might promise to choose an Attorney General who will focus the Department of Justice's limited prosecutorial resources on responding to corruption, violent crimes, and only the most dangerous drugs. Or a candidate might promise to do everything in their power to ensure that enforcement of marijuana laws does not disproportionately impact marginalized communities.

**Learn More:** See [here](#) and [here](#) about the proper use of presidential discretion in the enforcement and defense of laws.

#### **4. Candidates should not declare that, as president, they will refuse to be constrained by a particular law or part of the Constitution.**

**What's at Stake — the notion that nobody is above the law:** In a healthy democracy, nobody is above the law, not even the president. People lose faith in democracy when it is no longer capable of ensuring that everyone has to play by the rules. Indeed, this administration has made a habit of ignoring — or ginning up pretextual legal opinions reinterpreting — laws that would otherwise constrain its decisions. It has flouted, among other things, the [Hatch Act](#), the [Presidential Records Act](#), the [obstruction of justice statute](#), [nepotism laws](#), the Constitution's [Appointments Clause](#), [Spending Clause](#), [Emoluments Clause](#), [Take Care Clause](#), and the [First Amendment](#). A [record](#) number of agency actions in this Administration have been invalidated by the courts for failing to comply with basic procedural requirements. The president has also offered pardons or discussed pardons in ways that are unconstitutional because they would have the intent and effect of limiting his ability to be held accountable. These power grabs by the president undermine our democracy.

**A Better Approach — promote equal justice under the law, for everyone:** Candidates should celebrate statutes that enact the core American promise (not yet fully realized) of equal justice under the law, including for the president. Candidates should brag about their eagerness to comply with laws like the Hatch Act and the Emoluments Clause, and they should commit to transparency measures that will help hold them accountable to these promises to restore the American people's faith in our democracy. Candidates should also commit that as president they will not try to exempt themselves from the law including issuing pardons that would limit accountability.

**Learn more:** You can learn [here](#) about the president's obligation to "take care" that the laws are faithfully executed. Learn [here](#) why the pardon power cannot be used to place the President above the law. And learn [here](#) how the President has violated the First Amendment by threatening to use — and using — government powers to punish the speech of his media critics.

#### **5. Candidates should not threaten to bypass the Senate on appointments.**

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**What's at Stake — checks and balances:** Our Constitution gives the Senate the responsibility and duty to “advise and consent” on certain presidential appointments. The advice and consent process is an opportunity for the Senate to induce commitments from nominees and the executive branch about following the law and to cabin the president’s power over executive branch agencies that Congress created in the first place.

When presidents try to subvert the Senate’s role — as the current president did when he appointed Matthew Whitaker as Acting Attorney General and Mick Mulvaney as the Acting Head of the CFPB, and as President Obama did when he made an unconstitutional recess appointment to the NLRB — they engage in another type of executive power grab. A race to the bottom on appointments only accelerates the disintegration of the checks and balances that keep our democracy functioning.

**A Better Approach — promote proposals for breaking the gridlock:** Rather than exacerbate the problem, candidates should develop and promote proposals for breaking the now-customary gridlock on appointments. For example, candidates might embrace [bipartisan proposals](#) to change Senate rules so that presidential nominees are given up-or-down votes within 90-180 days.

**Learn more:** You can learn [here](#) about our proposal to reform the Vacancies Reform Act, which governs when presidents and cabinet members can bypass the Senate on appointments.

## **6. Candidates should not threaten to restructure federal courts in order to achieve a particular outcome.**

**What's at Stake — respect for the rule of law:** In a healthy democracy, courts are respected as independent and even-handed arbiters of the law, and as agents of accountability. Judicial independence, and the respect for the rule of law it safeguards, is all too easy to destroy. Overseas examples in Venezuela, Turkey, and Hungary demonstrate the dangers that arise when officials restructure the courts to bring them under the control of the executive branch.

In the aftermath of Senate Republicans’ actions to shrink the size of the Supreme Court to eight under a Democratic president, only to increase it to nine for a Republican president, it is understandable that some Democrats want to respond with their own form of court-packing. But escalating institutional warfare over the structure of the courts in which each side tries to wrench back control from the other ultimately undermines respect for the rule of law and removes an important check on executive power. When candidates normalize the idea that the judiciary can be restructured for partisan advantage, they undermine faith in the cornerstone of a law-based society.

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**A Better Approach — develop proposals for restoring faith in the courts:** Judicial confirmation battles are heavily politicized, and as the courts have become increasingly partisan, confidence in the judiciary has waned. Candidates should consider reforms to rebuild public confidence in the judiciary as a neutral and independent institution. To do that, they should make sure their proposals pass the “veil of ignorance” test and are designed to improve the institution as a whole, not just advantage one party or preferred set of legal outcomes.

For example, a candidate might promise to nominate people who represent the diversity of the United States or the diversity of the legal profession (currently federal prosecutors far outnumber former federal public defenders on the bench). Or a candidate might try to diffuse partisan confirmation fights by endorsing proposals to establish [18-year terms for Justices](#) or [court structures](#) that prevent every vacancy from becoming an occasion for all-out warfare.

Other reforms may pass the veil of ignorance test as well and candidates should consider them. But candidates should avoid the use of rhetoric that suggests an interest in re-structuring the courts in order to capture them for one party or set of preferred ideological outcomes.

**Learn More:** Learn more about court reform proposals that respect the rule of law [here](#) and [here](#).

## **7. Candidates should not promise to replace, ignore, or politicize portions of the civil service.**

**What’s at Stake — a government that works for everybody:** In a healthy democracy, civil servants are trusted and empowered to keep the machinery of government running in a fair-minded and even-handed way, bringing institutional knowledge from one administration to the next, regardless of their personal political affiliations. That way, the government can serve all Americans, not just political allies of those in power. The civil service has also served as a [gateway](#) to the middle class for many Americans, particularly communities of color.

Authoritarian leaders consolidate power by undermining or ignoring the civil service, the people in government who are not politically appointed and therefore not serving at the pleasure of the president. This president, for example, has publicly lashed out at civil servants who he perceives as Democrats, who have family members who are Democrats, or who have presented him with politically unfavorable facts. He has overruled civil servants’ determinations that giving security clearances to people in his orbit would threaten national security. And he promulgated an [executive order](#) that removed civil service protections for administrative law judges, subverting the mechanisms that insulated these judges from political pressure. This administration has also [made a habit](#) of [demoting civil servants](#) whom they perceive to be insufficiently loyal and used the bully pulpit to perpetuate “deep state” conspiracies.

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**A Better Approach — celebrate the civil service as an institution and ensure that any accountability measures do not subvert due process:** The American people are best served when the federal government can attract strong and diverse employees. But between the president’s Twitter feed, Fox News vitriol, and government shutdowns, [civil servant](#) morale has taken a beating. Candidates should celebrate the hardworking Americans who keep government running day in and day out.

This does not mean that candidates should ignore any malfeasance by civil servants. It does, however, mean that candidates should be exceptionally careful not to call for politically-motivated employment actions or to prescribe the actions of civil servants based on political reasons. It would thus be appropriate for a candidate to direct agencies to “make sure that attorneys who have failed to conduct themselves in accordance with the pre-existing standards are disciplined appropriately.” But candidates should promise to ensure that any such review is conducted by trustworthy and independent parties, and determined by an objective standard, so as to avoid politicizing our non-partisan civil service. And of course, it is always appropriate for a candidate to promise to ask their cabinet members to review standards of professional conduct and to strengthen those standards.

**Learn more:** You can learn more [here](#) about the history of the civil service and why protecting civil servants is so critical to our democracy.

## **8. Candidates should not lie or spread disinformation.**

**What’s at Stake — the foundations of self-governance:** Faced with a president who habitually lies, candidates may feel freer than ever to assert false facts, lie about their own achievements, or spread disinformation about their opponents. This may be the single worst thing that a candidate can do to American democracy. If Americans discover that no candidate and no political party can be trusted to tell the truth, it will be hard to regain confidence in our democracy. Candidates always have and, of course, always will highlight facts that are helpful to them and put themselves and their proposals in the best possible light. The problem is when this goes from spin to outright falsehoods.

**A better approach — prove yourself trustworthy and amplify accurate information:** The only way to preserve moral high ground — and provide Americans reason to have faith in their government — is to be meticulous about facts and the truth. Candidates could commit to ensuring that, once in the White House, their administration’s statements and actions are fact-based. Of course, part of being meticulous about the truth is calling out lies when you see them, so as to remind Americans that they are being deceived. However, this does not require amplifying inaccurate information. Rather, candidates should amplify accurate information affirmatively and be mindful not to repeat false claims.

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**Learn more:** The lies are not “only” spread on Twitter or at press briefings. In response to a [petition we filed](#) under the Information Quality Act, this Administration [has come](#) “perilously close to admitting that it engaged in disinformation about immigrants and terrorism in [a formal government report](#).”

## **9. Candidates should not cast unjustified doubt on election results or voter participation.**

**What’s at Stake — free and fair elections:** In a healthy democracy, everyone who is lawfully permitted to vote should be able to do so easily and safely. And voters should have faith that election outcomes reflect the ballots they cast. Recounts and audits are a normal part of election administration; they help ensure the accuracy of election results. But recently we have seen a spate of elected officials and candidates casting doubt on election outcomes merely because local officials have followed proper ballot-counting procedures or because they don’t like the results.

In 2018, for instance, President Trump [suggested](#) that Arizona’s legally-mandated process for counting mail-in ballots was “electoral corruption” and that a new election might be warranted. Then-Florida Governor Rick Scott, who was a candidate for U.S. senator, [alleged](#) — without evidence — that ballot-counters in his state were engaged in electoral fraud. President Trump falsely claimed he lost the popular vote because of ineligible voters. These allegations jeopardized voters’ faith in the fairness and accuracy of their elections, without any evidence that fraud occurred. Candidates should avoid these dangerous and false claims, which create barriers to voting and undermine confidence in elections.

**A better approach — remove barriers to participation and put in place meaningful security measures:** Candidates should be clear that all eligible voters have the right to cast their ballot. They should offer and support proposals to remove barriers to voting that disproportionately impact voters of color, voters of low socio-economic status, and voters with disabilities. Candidates should also support measures such as the Secure Elections Act (SEA) and the Protecting American Votes and Elections (PAVE) Act to strengthen election systems. The federal government must play a role in ensuring that states secure their voting infrastructure against attacks, including by requiring paper ballots and audits.

Candidates could also offer proposals to strengthen the Voting Rights Act and the Klu Klux Klan Act, which features vital provisions to counter voter intimidation practices. Candidates should be clear that robust election audits and recounts are fair and vital parts of ensuring each person’s vote is counted. They should also call on federal and state officials who are supervising elections they are running in to recuse themselves.

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**Learn more:** You can learn more [here](#) and [here](#) about the importance of having honest federal and state leadership who can fairly conduct and safeguard elections.

## **10. Candidates should not condone, encourage, or incite violence.**

**What's at Stake — our entire democracy:** In a healthy democracy, political disagreements are resolved at the ballot box, through civic discourse, through protest, and in the courts. When leaders quash dissent by threatening state violence and/or inciting violence by private actors, the freedoms in our constitutional system are rendered meaningless. Furthermore, such threats often send the message that some people are protected by the law while others are not.

This president has repeatedly encouraged and endorsed violence, by private and state actors, against his political opponents, members of the news media, and immigrants. With [hate crimes rising](#), each week seems to bring a new report of an arson, shooting, or thwarted attack that was motivated by racial or religious hatred. It is impossible to estimate the number of people who censor their political or religious views, refrain from engaging in public debate, or decide not to vote because of the fear of violence that the president's rhetoric has instilled in them. By threatening violence, the president has quashed dissent and delegitimized communities.

### **A better approach — use the president's threats of violence as a teaching**

**opportunity:** When the president [nods towards violence](#) at the ballot box, candidates should remind voters of their rights, remind voters that there are organizations out there who work to protect those rights, and discuss ways that new legislation could better effectuate those rights. When the president alludes to or threatens state violence, candidates can use this as an opportunity to question the disparate impact that it has on communities of color. For example, a candidate might observe that “whether you support ‘stand your ground’ laws or not, if they protect white men from prison, they also need to protect black women from prison.”

**Learn more:** Read [here](#) about the connection between the president's rhetoric and apparent cooperation between federal border agents and civilian militias at the U.S.-Mexico border.

## **11. Candidates should not solicit or accept offers of election interference from a foreign government.**

**What's at Stake — America's sovereignty:** Since the Declaration of Independence, if there's been one area of consensus across our politics it's that the American people get to choose who governs us. That way we can ensure our government reflects the views of American voters -- and that when in office government is accountable to the American people, not foreign rulers. In the face of the rise of authoritarianism around the world, foreign governments and actors will try to interfere in our elections to undermine U.S. democracy. When they do so, elected officials and candidates for office in the United States must unite together to stop them, regardless of

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party. In 2016, however, we saw the Trump campaign actively and repeatedly solicit and accept Russian interference in the election. When Congress had a chance to provide a united front in opposition to such interference, Senator McConnell blocked it from doing so in order to protect his preferred candidate.

**A better approach — use our shared commitment to national sovereignty to strengthen our democracy:** No candidate should solicit foreign assistance in the election or foreign efforts to interfere in the election. If candidates become aware of offers of foreign assistance, efforts at foreign interference, or requests made by allies for foreign interference they should report these immediately to law enforcement authorities. If asked about whether they would coordinate with a foreign government or accept such interference, candidates for office (and current office-holders) should also take every opportunity to remind voters that doing so is not only illegal, but also an affront to American democracy. We need to unite together, across party line, in defense of our elections and our democratic system of government.

**Learn more:** Read our view on why it's wrong to conspire with a foreign power to win an election [here](#).

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**The future of our democracy is at stake in the 2020 election.** Candidates from across the political spectrum should compete to offer bold, actionable proposals for what we can do to better protect our democracy from authoritarian threats — and to renew our democracy, so it can be its strongest and most inclusive.

These proposals and actions *must* honor and reflect our democratic and constitutional traditions. Through disciplined avoidance of imitating the dangerous tactics described above, candidates will help build a strong democracy we can all be proud of.

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