



ISSUE BRIEF | Center for Law & Justice

THE WEAPONIZATION OF GOVERNMENT IS WORSE THAN YOU THINK

TOPLINE POINTS

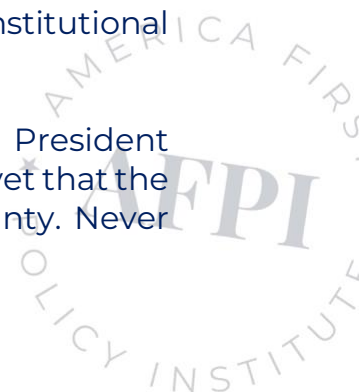
- ★ The federal government has been increasingly using its authority and power to unequally target groups and individuals based on their political or ideological views.
- ★ The weaponization of government in pursuit of political gain is a dangerous threat to democracy.
- ★ Congress must exercise its oversight authorities to ensure that prudence and objectivity guide the executive branch's administration of justice.

UNVEILING GOVERNMENT ABUSE IN PURSUIT OF JUSTICE FOR ALL

Reflecting on a perennial problem of republican government in Federalist #51, James Madison observed that “In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself” (National Archives, 1788).

Americans' civil and religious liberties depend on the enforcement of wise laws. But the awesome power of government can be abused by those entrusted to preserve public order and administer its services. When civil servants cease to regard all Americans as equal before the law and instead use the power entrusted to them to target individuals based on their politics, religious beliefs, or the color of their skin, they undermine core tenets of our constitutional order.

The recent Federal Bureau of Investigation (FBI) raid on former President Donald J. Trump's Mar-a-Lago residence was the starkest reminder yet that the equal application of the law often rests under a cloud of uncertainty. Never



before has an administration used the law enforcement authority of the federal government to target a former American president.

Alarming, this was not an isolated occurrence. In fact, the Biden Administration has frequently used governmental authority to target conservative actors in a wide variety of contexts. Combined with other incidents throughout the Obama Administration, these examples demonstrate a pattern of government abuse.

The America First Policy Institute (AFPI) has compiled a sampling of egregious abuses of executive authority that have taken place during the past several years. Together, they point to the urgent need for congressional oversight hearings, a renewed investigation by Inspectors General, and comprehensive civil service reform.

Intelligence Community Weaponized Against former President Trump and his Administration

The baseless weaponization of the intelligence community against former President Trump and his administration—throughout the 2016 campaign, the entire 4 years of the Trump Administration, and now in pursuit of former President Trump—represents the clearest example of the deployment of government resources to pursue an ideological and political opponent. The double standard is particularly clear when comparing the FBI’s raid on Mar-a-Lago, presumably over a president’s handling of classified material, as compared to its unwillingness to pursue Hillary Clinton over her handling of classified information on her servers. In the case of Clinton, then-FBI Director James Comey ultimately decided not to pursue charges per the Espionage Act because Clinton did not demonstrate “criminal intent” (McCarthy, 2017). In the case of President Trump, the intelligence and law enforcement communities—at the direction of the DNC and Clinton campaign, as it later became known (McCarthy, 2021)—established a special investigator and held an impeachment proceeding around an alleged narrative that President Trump was an agent of Russia and that he and his campaign “colluded” with Russia to hijack the 2016 election to ensure a Trump victory. Ultimately, the Mueller Report concluded that the “investigation did not establish that members of the Trump campaign conspired or coordinated with the Russian government in its election interference activities” and, per a letter from then-Attorney General William Barr to Congress, “did not draw a conclusion – one way or the other – as to whether the examined conduct constituted obstruction [of justice]” (Barr, 2019). The Mueller investigation cost not only more than \$30 million in taxpayer dollars (Polantz, 2019) but also needlessly damaged lives and careers, including that of seasoned and decorated soldier Lt. Gen. (Ret.) Michael Flynn, presumably because of their service on the Trump campaign.



Internal Revenue Service Investigation of Political Foes

The Internal Revenue Service (IRS) has a substantial history of targeting political groups, including the 2013 IRS targeting scandal during the Obama-Biden Administration (Overby, 2017). Certain groups, most of which were conservative, were targeted for additional IRS scrutiny when applying for tax-exempt status in the lead-up to the 2012 presidential election. However, this is far from the only example, and the IRS has also given cause for further concern with the recent ProPublica leaks of confidential tax information. Furthermore, the Left continues to push for expansion of the IRS and its authority despite the failure to address these serious concerns. The recently passed Inflation Reduction Act supersedes the IRS budget and promises to add up to 87,000 additional IRS agents who could help drastically increase the number of audits that hardworking Americans face. According to the Congressional Budget Office, at least \$20 billion of the expected revenue from IRS expansion will come from increased audits on lower- and middle-class households and small businesses, and the Joint Committee on Taxation reports that households with incomes under \$75,000 a year will likely account for nearly half of audits. These increases in budget and personnel, alongside a push for increased reporting requirements, will vastly increase the potential for serious abuse of the agency's authority.

Department of Homeland Security Creates Dystopian “Disinformation Board”

In April, Secretary Alejandro Mayorkas announced the creation of a “Disinformation Governance Board” at the Department of Homeland Security (DHS), which would be a cross-agency entity with an Executive Director, Nina Jankowicz, centered in the Secretary's suite (Seitz, 2022). In testimony, Mayorkas offered no clarity regarding how this board would function or what legal authority DHS possessed to establish it. He also pleaded ignorance of the hiring process, credentials, and questionable background of this new senior official. Jankowicz is a verifiably progressive partisan who would have been given the authority to determine for the American public what is real and what is not—what the public should see and what it should not. Some of her public opinions labeled republicans as “misinformers,” and she expressed concerns over unfettered free speech, encouraging the federal government to restrict the spread of information (Green, 2022). Ultimately, this board was terminated after significant public and bipartisan outrage. However, DHS's initial attempt to silence political opponents and everyday American citizens is alarming (Lorenz, 2022).



Antifa/BLM and January 6, 2021 Violence

The federal government has prosecuted the violent opportunists on January 6, 2021, much more severely than those who participated in the violent “Black Lives Matter” riots during the summer of 2020. These rioters engaged in widespread arson, looting, and vandalism, including attacks on federal buildings. Altogether, more than 2,000 police officers were assaulted or injured, and more than \$1 billion worth of property was damaged during the riots (Real Clear Investigations, 2021). In most major jurisdictions where rioting occurred, charges or citations for these rioters were dropped, dismissed, or otherwise not filed in more than 90% of cases (Real Clear Investigations, 2021). In some cases, the Biden Administration retroactively reduced convictions after rioters pled guilty. For example, two Brooklyn attorneys who firebombed an empty police cruiser pleaded guilty to charges that carried a maximum 10-year sentence. The Biden Administration allowed them to withdraw their pleas and plead guilty to lesser charges that would likely send them to jail for less than 2 years (Associated Press, 2022). By contrast, the Biden Administration has vigorously prosecuted the January 6 rioters. More than one-third of those arrested have already pleaded guilty to federal charges.

Progressive Activist Prosecutors

Many examples exist where progressive activist prosecutors have sought to subvert the rule of law by unilaterally decriminalizing whole categories of offenses, which has unsurprisingly led to more crime and social dysfunction. Earlier this year in New York City, Manhattan District Attorney Alvin Bragg chose to charge bodega clerk Jose Alba with second-degree murder after Alba mortally wounded an assailant who had become enraged over a transaction. Although the incident, which was captured by surveillance video, appeared to show Alba clearly acting in self-defense, Bragg nonetheless pursued the murder charges, incarcerating Alba at Riker’s Island (Vago, 2022). The charges were ultimately dropped but only after widespread, bipartisan outrage (NY Post, 2022).

Another example of an activist prosecutor usurping the prerogatives of the legislative branch of government was Florida’s Hillsborough County State Attorney Andrew Warren’s declaration that his office would not pursue charges against violators of the state’s abortion laws. In removing Warren from his position, Florida Governor Ron DeSantis stated, “That is what the legislature has enacted, and it’s not for him to put himself above that and say that he is not going to enforce the laws” (Deliso, 2022).

Progressive activist prosecutors may claim to seek social justice, but by ignoring the application of the law toward some and enhancing it toward



others, these prosecutors are inappropriately leveraging the powers of government to meet their own political or ideological ends.

Department of Education Investigates Religious-Affiliated Institutions

The Department of Education's Office of Civil Rights (OCR) is investigating six religiously affiliated colleges for alleged discrimination against LGBT students, even though the colleges' actions are clearly permitted under the religious exemption of the current Title IX regulations (Riley, 2022). At issue are guidelines prohibiting sexual intimacy outside of heterosexual marriage, refusals to recognize LGBT student groups, and IT systems that block "LGBTQ-affirming" resources. Colleges and universities "controlled by religious organizations" are entitled to an exemption by section 106.12 of the 2020 Title IX rule when application of Title IX regulations is inconsistent with the religious tenets of the school. The real purpose of formal OCR investigations in cases such as these is to burden the institution with an onerous and costly process that creates negative publicity (Notheis, 2022). Activist organizations can then leverage that publicity in their ongoing quest to weaken the religious liberty exemption (Adams, 2021). These investigations have demonstrated yet another abuse of government authority with real-world consequences.

Department of Justice Fails to Protect Churches and Crisis Pregnancy Centers

Since the leak of the *Dobbs* draft decision in early May and the subsequent release of the full decision overturning *Roe v. Wade* in June, there has been a string of violence, vandalism, and disruptions in pregnancy resource centers, churches, and faith-based organizations across the Nation. According to Susan B. Anthony Pro-Life America, there were more than 40 incidents of violence, vandalism, or disruption of services in the 2 months immediately following the leak. Some of these incidents include: a firebombing of the Oregon Right to Life headquarters in Keizer, Oregon (Leon, 2022); smashed windows and graffitied walls at the Next Step Pregnancy Services in Lynnwood, Washington (O'Neil, 2022); and the disruption of church services at His Nesting Place Home for Mothers & Children in Long Beach, California (Novielli, 2022), just to name a few. These attacks prompted a letter from more than 100 members of the House of Representatives asking Attorney General Merrick Garland to investigate these incidents as domestic terrorism (Brooks, 2022). To its credit, the Biden Administration has stated that "violence and destruction of property have no place in our country," and these attacks are "completely unacceptable regardless of politics" (Olohan, 2022). We value law and order and appreciate the strong rhetoric from the Biden White House, but we also realize that actions speak louder than words. Unfortunately, the Biden Administration's actions have failed to protect America's pregnancy resource centers, churches, and other pro-life faith-based institutions from the violent actions of radical



pro-abortion activists. In order for this behavior to stop, the Biden Administration must fully investigate each and every one of these incidents and bring the perpetrators to heel, so that the Constitution's promise of equal protection of the laws can apply to all American citizens—not just those who the Biden Administration considers political allies.

Department of Justice Targets Parents at School Board Meetings

The Biden Administration's FBI and the Department of Justice (DOJ) have been weaponized against parents advocating for their children at school board meetings. Shortly after a letter from the National School Board Association (NSBA) called for the DOJ to use the PATRIOT Act against concerned parents attending school board meetings, the DOJ announced it would be taking steps to combat "the rise in criminal conduct directed towards school personnel" in a memo (Lee, 2021). Attorney General Merrick Garland directed the FBI to coordinate federal and state law enforcement action against these "threats" and "other forms of intimidation and harassment." his announcement did not cite any specific incidents of violence or threats of violence. Additionally, whistleblower documents suggest Attorney General Garland then lied to lawmakers on October 21, 2021, when denying that DOJ divisions dedicated to counterterrorism would be deployed against concerned parents at school board meetings (Justice, 2021). Furthermore, an email revealed that Department of Education Secretary Miguel Cardona solicited the NSBA letter to the FBI comparing concerned parents attending school board meetings to domestic terrorists (Hassan, 2022).

Biden Administration Fires Advisory Board Members

In a complete break with long-standing norms and precedent, the Biden Administration asked 18 Trump-appointed members of military academy advisory boards to resign immediately or be fired, even though they had been appointed to 3-year terms (Lippman, 2021). The action leaves the United States Military Academy, Air Force Academy, and Naval Academy—schools responsible for training the next generation of military leaders—without a single board member appointed by President Trump. Among those asked to step down are eminent military leaders, including retired Generals Jack Keane and H. R. McMaster (Crilly, 2021). Boards of Visitors are strengthened by bipartisan membership crossing administrations, which helps to ensure the country's military academies remain insulated from narrow partisan politics. However, the Biden Administration's action risks politicizing the membership of these Boards and could ultimately serve to undermine the institutions and U.S. national security.



Department of Justice Views Betsy Ross Flag and Other Patriotic Symbols as Extremist

The Biden Administration's FBI and DOJ have labeled the use of traditional American flags and symbols as an indicator of violent extremism. In August 2022, investigative news organization Project Veritas released a leaked FBI document provided to them by a whistleblower. The document cited imagery such as the Betsy Ross flag, the Gadsden "Don't Tread on Me" flag, and references to the Second Amendment as what is used by Militia Violent Extremists. This shortly followed another disclosure by a whistleblower within the FBI that revealed that "FBI officials are pressuring agents to reclassify cases as 'domestic violent extremism' even if the cases do not meet the criteria for such a classification" (Lako, 2022). FBI Director Christopher Wray testified in hearings last year that they have significantly increased investigations into "domestic violent extremism," coinciding with assertions by President Biden and DHS Secretary Mayorkas that the greatest threats to the country are from white supremacists and domestic extremists (Merchant, 2021). In the Senate Judiciary Committee's hearing on FBI oversight 2 days after the document's release, Director Wray claimed not to be familiar with the document (C-SPAN, 2022).

CONCLUSION

The above examples only scratch the surface of the scope and manner in which politicians and ideologues can use their power and influence to weaponize government against the average citizen.

Congress must take its oversight responsibilities seriously and initiate investigations into the most obvious examples of abuse. As sunlight is the ultimate disinfectant, shedding light on the decision-making process behind many of the listed incidents of obvious or apparent disparate enforcement will increase transparency and begin to restore public faith in the systems themselves.

AFPI has already begun to pick up the slack where Congress and the executive branch have failed to take action. In the aftermath of the Mar-a-Lago raid, AFPI immediately issued over 50 Freedom of Information Act requests to the FBI and DOJ to better understand the justification for the raid. Those requests are pending, but AFPI will continue to move forward in pursuit of the fair and equal application of the law to ensure that the government is committed to Justice for All.



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