



THE SECURITY FROM POLITICAL INTERFERENCE IN JUSTICE ACT OF 2019

SENATOR SHELDON WHITEHOUSE

The Department of Justice has historically enjoyed a measure of independence from political interference in order to ensure even-handed administration of the laws. While presidents and White House officials may properly engage with DOJ on broad policy questions, it threatens the equal and just administration of law when the White House seeks to influence DOJ decision-making on individual law enforcement matters. When this important norm has been violated, presidents have received heavy criticism. Although both DOJ and the White House have long maintained policies that define and prohibit such inappropriate contacts, these policies lack the force of law and can be violated without remedy. As a result, presidential administrations have continued to violate this norm. Under President Trump, the principle of DOJ independence has further deteriorated, demonstrating clearly that the current contacts policies are not effective. Indeed, public reporting has revealed numerous contacts between White House and DOJ officials that, on their face, violate the contacts policies.

The **Security from Political Interference in Justice Act** seeks to (a) establish the norm of DOJ independence; and (b) provide transparency and accountability into communications between the White House and the DOJ. The bill would require that:

- **Both the White House and DOJ log all communications between White House and DOJ officials and staff** pertaining to specific cases or investigations that DOJ might undertake. The log would include (1) the names of participants in the communication, (2) the topics of the communications, and (3) a statement describing the purpose and necessity of the communication.
- **The logs be disclosed every six months to Congress and to the Office of the Inspector General (OIG) and the Office of Professional Responsibility (OPR)** of the Department of Justice. It directs OIG and OPR to review the logs and to notify Congress if any of the logged communications are inappropriate from a law enforcement perspective or raise concerns about improper political interference. The bill exempts certain top-level contacts from disclosure to Congress, but requires those contacts to be logged, shared with OIG and OPR, and disclosed in response to a Congressional subpoena. Both the logging and disclosure requirements would remain in place irrespective of the White House and/or DOJ's internal contacts policies.

Frequently Asked Questions

The president has said that the Constitution allows him to do “whatever he wants” with DOJ. Is this bill constitutional?

First, this bill doesn’t actually restrict the White House’s contacts with DOJ — it just requires that they be logged and reported to Congress and DOJ’s own internal investigatory agencies. That information is essential for Congress to fulfill its constitutional duties to oversee the actions of the executive branch. Moreover, the President is wrong — the Constitution itself limits how the President can direct DOJ, for instance by barring him from directing DOJ to violate the Due Process Clause, the Equal Protection Clause, or the First Amendment.

Why doesn’t the bill require the President’s contacts to be reported directly to Congress?

The bill respects executive privilege by not requiring disclosure of proper high-level contacts between the White House and DOJ. Those contacts are still subject to review by DOJ’s investigatory agencies, including the independent Inspector General, and contacts that are found to be improper must be disclosed to Congress.

Could the log be subject to disclosure under the Freedom of Information Act or through civil or criminal discovery?

Yes, the logs could potentially be subject to disclosure under the Freedom of Information Act or in civil or criminal discovery, subject to the ordinary limitations of both of those tools. The log’s availability in civil and criminal discovery is particularly important. In some circumstances, White House interference in individual Department of Justice matters may violate the Due Process Clause. The log requirement will give civil litigants and criminal defendants, when permitted by a judge, an opportunity to determine whether their cases have been subject to improper influence.

Endorsements

This bill is supported by Brennan Center, Common Cause Citizens for Responsibility and Ethics in Washington, Niskanen Center, Project on Government Oversight, Protect Democracy, Public Citizen, Republicans for the Rule of Law, Stand Up Republic and Tech Freedom.