

November 30, 2021

Dear Mr. Berenbroick and Mr. Van Wye:

In 2018, the Brennan Center for Justice convened the National Task Force on Rule of Law and Democracy, a group of former senior government officials who have served in both Republican and Democratic administrations. The Task Force crafted a series of proposals for legislative reform to address abuses of power in the executive branch, focusing on strengthening ethics, safeguarding the rule of law, ensuring that government leaders are qualified and dedicated public servants, and curbing political interference in government science. As an outgrowth of this work, the Brennan Center published a report detailing steps the president can take to safeguard against abuse among executive branch officials and continues to monitor threats to effective and democratically accountable government regulation, both in the executive branch and the judiciary.

Of relevance to the December 1, 2021, hearing on the Administrative Procedure Act, held by the House Committee on the Judiciary's Subcommittee on Antitrust, Commercial, and Administrative Law, the Brennan Center and its bipartisan Task Force have championed several legislative proposals, detailed more fully in the attached report, which would safeguard evidence-based policymaking against the personal and partisan whims of political officials.

- To address recent episodes of political officials manipulating and suppressing the expert analyses underlying regulations, Congress should require agencies to publish these analyses, as well as substantive alterations made to them by or at the suggestion of political officials, both in the agency and the White House, as part of the administrative record during rulemaking.
- In response to recent reports of political officials restricting public access to government research and data, particularly during the Covid-19 pandemic, Congress should codify a presumption of disclosure for government-funded research and data, specifying a timeframe within which the information must be disclosed. Congress should also require public access to government-funded research and data that are in the public domain, require agencies to establish safeguards against the removal of research and data, and create an enforcement mechanism to ensure compliance, along with remedies for noncompliance.

Additionally, the Task Force and the Brennan Center have endorsed the Scientific Integrity Act, introduced in the 117th Congress as H.R. 849, which would codify scientific integrity standards — a key component of effective government regulation. The Task Force and the Brennan Center have also championed reforms to ensure the proper functioning of science advisory committees.

We welcome the opportunity to discuss our proposals for reform with you in greater detail. Please do not hesitate to contact me or my colleagues Dan Weiner, Deputy Director, Government Reform Program, and Maya Efrati, Public Policy Counsel, if you have any questions or would like additional information.

Best wishes,

Martha Kinsella  
Senior Counsel, Democracy Program