

Trench Warfare: Inside the Battles to Save Democracy From the Trump Administration

Molly Ball

Black-clad security forces armed with riot shields advance on a mass of peaceful demonstrators. Rubber bullets and gas canisters fly. The embattled head of state, flanked by his top prosecutor and general, emerges from his estate to stake a claim for order. The scene looked like something out of a banana republic, but it unfolded in Washington's Lafayette Square on June 1. And soon after, an obscure nonprofit got a call from a state attorney general's office, asking the perennial questions of the Donald Trump era: Can he do that? How can we stop that from happening here?

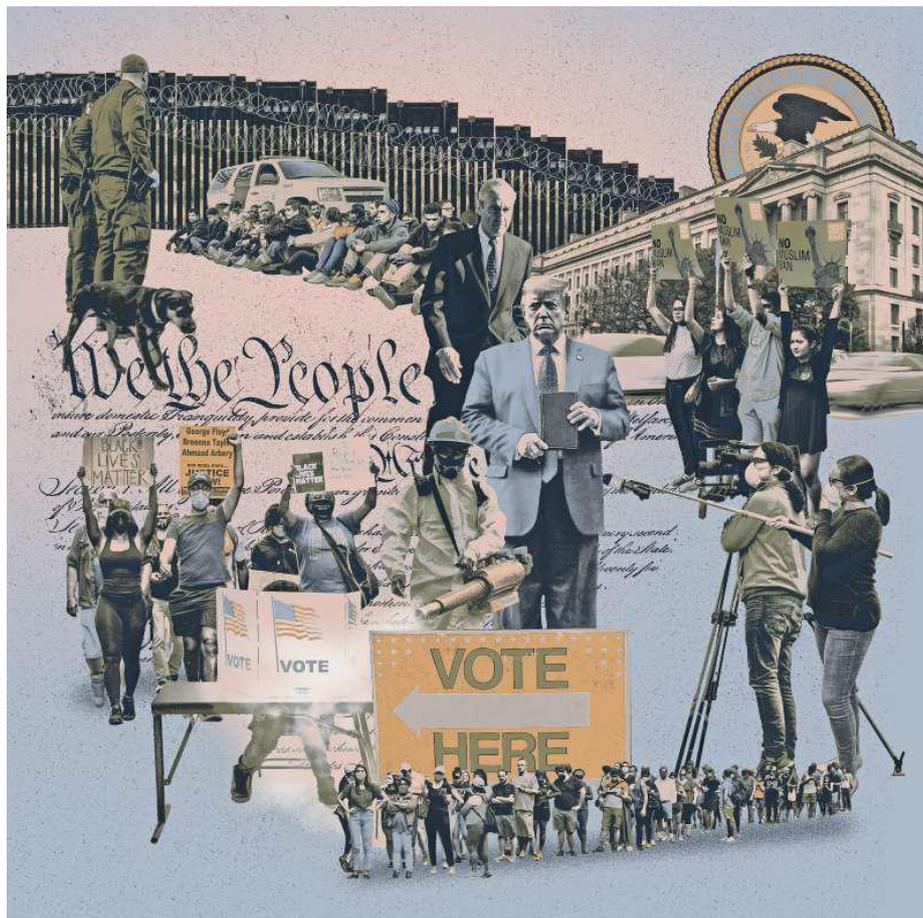


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*These are questions the nonprofit Protect Democracy was founded to answer. When the call came in (from a state the group declines to name), its lawyers got to work on an analysis of the Insurrection Act of 1807, aiming to equip local leaders to fight back if the Administration seeks to **send in the military** over their objections, as **President Trump has threatened to do**. And they began rounding up bipartisan signatories for a statement on behalf of Department of Justice veterans decrying **Attorney General Bill Barr's** conduct.*

Since the beginning of the Trump presidency, Protect Democracy has cast itself in the role its name suggests: defender of America's system of government against the threat of authoritarianism. Started by two former Obama White House lawyers who were

concerned that the new President would undermine the rule of law, the group has filed lawsuits to block Trump's retaliation against critics and to curtail his use of emergency powers. It has organized groups of civil servants to speak out against what they say is Trump's politicization of law enforcement. And it has built bipartisan congressional support to rein in presidential powers.

Protect Democracy has notched some big wins. The group's lawsuits invalidated Trump's emergency declaration for the southern border and blocked the Administration from making it harder for low-income green-card holders to become citizens. They successfully argued in New York federal court that the President's retaliation against media outlets may violate the Constitution, and helped ensure that a defamation lawsuit brought by a former mistress could proceed in state court. Their advocacy has gotten states to reform election procedures and Congress to act to limit Executive power.

It's an impressive record for a three-year-old startup. "They are innovative, imaginative, energetic and extremely effective," says Benjamin Wittes, senior fellow at the Brookings Institution and editor in chief of Lawfare, whose work with the group led to the release of the Watergate prosecutors' road map that had been sealed for more than 40 years.

The June 1 spectacle at Lafayette Square seems to have brought some reticent figures closer to Protect Democracy's view of things. Former President George W. Bush and former Defense Secretary Jim Mattis were among those who spoke out in favor of the protesters. "When you see military helicopters above the streets of D.C., using tactics from war zones, using [tear gas on peaceful protesters](#) exercising their First Amendment rights," says Ian Bassin, co-founder and executive director of Protect Democracy, "these things so match what people imagine when they think of the toppling of democracies that it struck a chord."

From the beginning, however, Protect Democracy has argued the onset of authoritarianism in America would come not with a flash-bang grenade but with the whimper of institutions gradually succumbing to the erosion of long-standing norms. Ideas that seemed far-fetched three years ago have become routine: a President who declares himself immune to congressional or judicial oversight; whose Attorney General seeks to exempt the President's friends from responsibility while prosecuting his political enemies; whose lawyers argue in open court that he could, in fact, shoot someone on Fifth Avenue without consequence.

The events of recent days appear to validate the group's concerns, with Trump's former National Security Adviser accusing him of corrupting the electoral process and the Administration firing a U.S. prosecutor whose office was investigating the President's close associates. Trump continues to sow doubt about the integrity of the upcoming election, recently declaring on [Twitter](#) that it would be "the most RIGGED Election in our nations history."

As the election nears, Protect Democracy is focused on securing the Nov. 3 contests against foreign and domestic meddling. The group, which is officially nonpartisan, is funded by foundations and individual donors, including the LinkedIn founder Reid

Hoffman and Boston-based investor Seth Klarman, who before Trump was the GOP's largest donor in New England.

Protect Democracy is lobbying and advising states on election procedure with an eye to ensuring a legitimate result. Yet the group is also looking beyond Trump, seeing him as a symptom of a system whose weakened defenses leave it open to abuse, and figuring out what can be done to strengthen American democracy in the future, regardless of who is in the White House next year.



Evan Vucci—AP Trump tours a section of the border wall in Otay Mesa, Calif., on Sept. 18, 2019 Evan Vucci—AP

If you believed your government was slouching toward dictatorship, what would you do about it? The answer, to judge from Protect Democracy's routine, can seem mundane. On a recent Monday, 55 people are assembled as squares on a screen in a Google Meet video chat. Long before COVID-19 turned nearly all white collar workers into video-chat adepts, Protect Democracy was a work-from-anywhere organization, its 66 employees scattered from coast to coast. (Bassin is based in the Bay Area, co-founder Justin Florence in Boston; the group maintains a lease on a WeWork space in D.C.)

But the topics on such calls reach to the highest levels of government. "I'm working on a letter calling on the Justice Department inspector general to open an investigation into Barr's involvement in Lafayette Square," Justin Vail, a lawyer for Protect Democracy, tells the team. Vail, a former Obama White House and Democratic Senate aide, tells the group he's assembled more than a thousand signatories, former federal prosecutors from Republican and Democratic Administrations.

These sorts of current and former government insiders are disdained by the President and his allies as "the deep state"—petty bureaucrats dedicated to undermining Trump's necessary disruption of the status quo. But a competent, nonpolitical civil

service is an important component of democracy. In America, officials from the President to the lowest-ranking soldier swear an oath pledging loyalty not to any ruler, Administration or party, but to the Constitution itself.

For many civil servants, that non-partisanship has traditionally extended from one Administration to the next, and even past their time in government. “It’s hard to overstate how unusual—basically unprecedented—it is to have former career officials speaking out in this way,” says Ben Berwick, who spent six years in the DOJ’s Civil Division during the Obama Administration. He left a few months after Trump took office, and became one of Protect Democracy’s earliest hires. The group has now massed hundreds of DOJ alums on a series of letters like the one Vail is preparing.

Among the most high-profile was one stating that any ordinary American who committed the acts described in [Robert Mueller’s](#) Russia report would have been prosecuted for obstruction of justice, and another deploring Barr’s extraordinary move to request a lighter sentence for former Trump campaign aide Roger Stone.

The group says such letters have brought concrete changes. “We have seen [current Justice officials] resign, withdraw from cases, object and file internal complaints” as a result, Vail says. “It’s a reminder that people on the outside support them having the courage to stand up and continue to work with integrity.” As the group was preparing its 2,500-signatory letter on the Stone case, Barr publicly distanced himself from the President—a sign, the group says, that he was feeling pressure in his ranks. The department subsequently backtracked on its sentencing recommendation.

On June 23, a former prosecutor testified to Congress that Stone’s softened sentence had been the result of “heavy pressure from the highest levels of the Department of Justice to cut Stone a break” because of “his relationship to the President.” Protect Democracy’s founders, Bassin and Florence, both served in the White House counsel’s office during the Obama Administration.

By the time Trump took office, both had left government and moved on to other things—Bassin to international antipoverty work, Florence to a comfortable gig at a top law firm. But as the new President’s actions set off alarm bells, the two began corresponding. They realized that there was no single organization doing what they were talking about: safeguarding basic principles, like checks and balances, and the idea that no one is above the law, against a perceived threat to democracy itself.

Bassin and Florence began consulting scholars who study authoritarianism abroad, hoping on some level that experts would say they were out of their minds. But the scholars shared the same worries. “The scary thing was that no one rolled their eyes; nobody said, ‘Oh, come on, really, you’re being hysterical,’” Bassin says.

Experts pointed to places like Poland and Turkey, where authoritarian leaders won elections and turned their countries into what scholars of the region describe as “Potemkin democracies” by curtailing civil rights and undermining popular control of the government.

*“Democracies today die in a much more subtle fashion than they used to,” says Harvard political scientist Steven Levitsky, co-author of the book *How Democracies Die*.*

“It’s pretty rare to see the generals all at once seize power, dissolve the constitution, and imprison dissidents and the press. Instead you see elected leaders gradually—imperceptibly to many citizens—transform the machinery of government to protect their friends and harass and punish their enemies.”

Bassin recalls one early, telling example. Under Obama, one of his jobs had been to advise Executive Branch officials on how to follow rules set out in thick binders and handed down from Administration to Administration starting with President Eisenhower’s in the 1950s. Many weren’t laws so much as norms and codes intended to embody the spirit of public service.

Among the precepts, for example, is a 14-page memo dating to the Carter Administration that lays out specific rules for when and how White House officials could contact the Justice Department, to avoid the perception of politics influencing law enforcement.

In February 2017, then White House chief of staff Reince Priebus contacted the FBI to ask the agency to publicly refute a New York Times report about contacts between Trump associates and Russian agents, and the White House openly acknowledged he had made the contact.

It was already clear back then—before Trump fired FBI Director James Comey, before Mueller began his investigation, before Ukraine and impeachment and everything else—that the new Administration was not interested in the binders and memos, the rules and norms, that had prevailed for generations.

Bassin and Florence wanted their organization to be bipartisan. “It really is something that Republicans and Democrats, all people of good faith, should be able to agree on, that the President is not a monarch who is above accountability of any kind,” says Jamila Benkato, who joined the group after clerking for a federal judge in California. But most of the group’s early hires were liberals. Even Trump-skeptical conservatives wanted to give the new President a chance to grow into the job. And the group has struggled to establish a public identity that transcends its liberal roots. Yet the mission has attracted some Republicans.

Protect Democracy’s employees include a former GOP presidential campaign operative and consultant for the Koch brothers’ political outfit; a former clerk to the conservative federal judge Edith Brown Clement; and a former GOP Senate staffer and writer for the conservative Weekly Standard. In March, the group assembled 37 former Republican members of Congress and Administration officials to file a friend-of-the-court brief in Trump v. Vance, arguing that the President’s accountants must comply with a subpoena for documents related to his hush-money payments to alleged mistresses.

“From a conservative standpoint, it’s clear to me that the President is offending the rule of law generally and the Constitution specifically,” says Stuart Gerson, who headed the DOJ’s Civil Division under President George H.W. Bush. Gerson worked with Protect Democracy on its successful lawsuit in a conservative court in Texas, which thwarted Trump’s attempt to build his border wall without permission or funding from Congress. “I’m an apostle of the unitary executive—I argued all the

war-powers cases in the Bush Administration,” Gerson says of the idea that the Constitution gives the President expansive powers over the workings of the Executive Branch. “But that [doctrine] puts the President in charge of the Executive Branch, not the other two.”



Doug Mills—The New York Times/Redux Protect Democracy has organized former Justice Department officials to speak out against Barr, left, and President Trump
Doug Mills—The New York Times/Redux

Sometime in the coming weeks, the Supreme Court is set to rule on Trump v. Vance and two related cases having to do with the validity of subpoenas into the President’s private conduct. The cases will test the idea that no one is above the law, by resolving whether a President can be investigated and held accountable for any activities, even those that precede or have nothing to do with the office. Protect Democracy’s advocates say the cases are part of a broader set of questions about presidential power, which they have been fighting to constrain.

One of Trump’s first moves as President was the creation of an election-integrity commission, which sought to examine allegations of voting abuse, like his baseless claim that the 2016 election was tainted by millions of illegal votes. Working with other advocacy groups, Protect Democracy sued based on a technicality—the Administration’s failure to follow the Paperwork Reduction Act, which mandates the procedures for establishing such commissions—and informed states they were not required to provide the Administration with the voter data it sought.

The commission, Protect Democracy argued, represented not a good-faith effort to secure the vote but an attempt to sow doubt based on a nonexistent problem. Within a few months, the commission was shuttered.

Later that year, when Trump pardoned Joe Arpaio, the former Maricopa County, Arizona, sheriff convicted of contempt of court for racially profiling Latinos, Protect Democracy filed a brief arguing the pardon was unconstitutional. The U.S. Court of Appeals for the Ninth Circuit agreed to appoint a private attorney to argue the matter.

And when the Administration released a report claiming that immigrants were responsible for most acts of terrorism—information Trump cited in his 2017 address to Congress—the group sued based on an obscure statute, the Information Quality Act, that’s typically used by Big Business to dispute environmental regulations. It was a legally creative approach to a vexing question: If the government decides to simply make up statistics, does the public have any recourse? While that litigation is still pending, the Justice Department admitted in court that the terrorism report was inaccurate.

When the former Apprentice contestant Summer Zervos sued Trump for defamation in 2017 after he called her a liar for accusing him of sexual assault, Protect Democracy filed the only outside brief, arguing the President was not immune from civil lawsuits. It was a little-noticed case, but one the group thought could establish a dangerous precedent. In ruling Zervos’ suit could go forward, the court drew extensively on Protect Democracy’s arguments. It is the first time a court has ruled the President is subject to civil lawsuits in state court.

In October 2018, Protect Democracy filed another lawsuit on behalf of PEN America, a journalists’ organization, arguing that Trump was violating the First Amendment by revoking press credentials to punish journalists and threatening media businesses’ bottom lines: stalling the proposed merger of CNN’s parent company, raising postal rates on Amazon (whose founder, [Jeff Bezos](#), owns the Washington Post) and threatening to revoke broadcast licenses. In March, the U.S. District Court for the Southern District of New York ruled the suit could go forward.

Over the course of this presidency, Protect Democracy has broadened its purview, on the theory that threats to American democracy do not begin or end with Trump, and that many of the weaknesses he is exploiting predate him. Presidents of both parties have steadily expanded executive power, while Congress has willingly ceded more and more of its constitutional authorities.

Protect Democracy has worked with both parties in Congress to reclaim some power from the Executive Branch, teaming up with GOP Senator Mike Lee on a bill putting new limitations on presidential emergency powers. The legislation advanced out of committee on a bipartisan 11-2 vote. Protect Democracy is also collaborating with advocates who have been working for years to reassert congressional authority over war powers; the group filed lawsuits to force the Administration to release the memos justifying its military strikes on Syrian chemical-weapons sites and the Iranian general Qasem Soleimani.

In 2018, Protect Democracy broke away from its federal work and intervened in recounts under way in two states, Georgia and Florida, where candidates were overseeing elections in which they were also competing. In Georgia, their lawsuit helped prompt gubernatorial candidate Brian Kemp to resign as secretary of state.

Since then, the group has sought to find and fix weaknesses in voting systems, lobbying and advocating for new voting machines in South Carolina and Pennsylvania. It has also tackled voter suppression, using an old statute aimed at the Ku Klux Klan to stop a Trump ally from harassing Latino voters in Virginia and

working with a North Carolina group, Forward Justice, to bring a lawsuit that would force the state to re-enfranchise felons.

More than a year ago, Protect Democracy formed a bipartisan election task force to examine such threats and recommend responses. Ironically, one of the crises they originally decided not to plan for was a potential pandemic. Now, as COVID-19 has thrown states' election plans into doubt, the group has made a set of recommendations for moving forward with mail balloting and other changes.

For now, Protect Democracy says it wants to ensure that the November election is free and fair, producing a result that can be widely accepted as legitimate regardless of who wins. Whenever Trump leaves office, the group envisions a brief window for Congress to pass reforms, similar to the burst of legislation that followed President Nixon's resignation. The organization has been gearing up for this with a "100 days agenda" of recommendations for the next President, including changes to election systems, prohibitions on election interference and campaign-finance reform.

In a democracy, the people are the ultimate check on power. Protect Democracy's central argument is that institutions don't protect themselves; people have to be activated to use the tools the system provides. In a timely metaphor, the group's leaders compare authoritarianism to a virus sweeping the globe: first you treat the patient by activating the body's immune system to fight off the illness; over time, you formulate a vaccine to provide immunity in the future.

"When Ian and I first started talking about this, we thought it would be an organization that lasted however long Trump was in office, then folded up shop," says Florence, the group's co-founder and legal director.

"What we've learned is that we're seeing a moment that requires a generation-long response. Ultimately, we've got to rebuild our institutions to make our system more resistant to a future authoritarian-minded leader."

With reporting by Leslie Dickstein and Josh Rosenberg