

March 20, 2025

The Honorable Mike Johnson
Speaker, U.S. House of Representatives
H-232, The Capitol
Washington, D.C. 20515

The Honorable Hakeem Jeffries
Minority Leader, U.S. House of Representatives
2267 Rayburn House Office Building
Washington, DC 20515

Re: Letter of Opposition to H.R. 1789

Dear Speaker Johnson and Minority Leader Jeffries,

We, the undersigned organizations, write to you today in opposition to H.R. 1789, the “Promptly Ending Political Prosecutions and Executive Retaliation Act” (PEPPER Act). This sweeping bill would significantly weaken our justice system by essentially eliminating a final remaining form of legal accountability for executive branch misconduct. In doing so, the PEPPER Act would upend the delicate balance of federalism and interbranch checks designed by our nation’s Founders. Passing this bill would represent a dangerous step towards making the president a king.

The PEPPER Act purports to codify the Supreme Court’s recent decision in *Trump v. United States*, which granted the president sweeping immunity from prosecution for official acts taken in office. In fact, the Act goes much farther.

Existing law already allows civil or criminal cases against a federal office holder to be removed from state to federal court if the case relates to acts taken “under color of such office,” meaning the acts in question were within the scope of the official’s duties.¹ But this bill would allow both sitting *and* former presidents or vice presidents, and current *and* former executive branch officials, to remove a criminal or civil state law case against them from state court to federal court.

Once in federal court, the PEPPER Act would significantly expand any immunity granted to the president under *Trump v. United States*. The bill would grant presumptive immunity to all current and former federal officials, rebuttable only by “clear and convincing evidence” from state prosecutors that the defendant’s actions were not undertaken under color of law. At the same time, the bill would severely restrict the scope of evidence admissible to make that showing and would prohibit courts from deciding which acts by Executive Office of the President officials are official. This is a daunting evidentiary burden, making it extraordinarily difficult to prove that the defendant was, in fact, acting outside the bounds of their official authority.

¹ 28 U.S.C. § 1442(a)(1); Congressional Research Service, *Removal to Federal Court of Cases Against Federal Officials and Agents*, <https://crsreports.congress.gov/product/pdf/LSB/LSB11213>.

Finally, the PEPPER Act would also require the dismissal of a case against a sitting or former president or vice president unless the state can show, again by clear and convincing evidence, that the prosecution would “not in any way interfere [with], hinder, burden, or delay” the president or vice president’s duties. Taken together, these provisions would essentially make it impossible to successfully try a state law case against a sitting or former president, vice president or high-ranking executive branch officials who report to the president, making them almost entirely immune from the requirements of state law. And when read in conjunction with *Trump v. United States*, the PEPPER Act would effectively shield the president in perpetuity from almost all forms of legal accountability, allowing them to engage in misconduct with complete impunity.

Meanwhile, the PEPPER Act seemingly applies only to cases which originate in state court, leaving unchanged Department of Justice (DOJ) prosecutions against executive branch officials which originate in federal court. Thus, if enacted this Congress, it would not limit the ability of the Trump administration to bring vengeful political prosecutions against past executive branch officials—a course of action the Trump administration has reportedly considered.² While the Act would also retain this same power for future administrations, President Trump has authority to issue wide-ranging pardons—a power he has used liberally in the past³—to his executive branch officers before leaving office, which would immunize those officials from federal prosecution. In other words, if enacted, the PEPPER Act could create a landscape where all high-ranking Trump administration officials could be given an exclusive pass and be protected from any future prosecutions for misconduct in office by crippling the states’ ability to prosecute officials for misconduct in conjunction with the exercise of the pardon power while retaining the Trump administration’s ability to pursue politically-motivated prosecutions against the administration’s perceived rivals.

By essentially immunizing all high-ranking executive branch officials from both state and federal prosecution, the PEPPER Act would upend the relationship between the executive, legislative and judicial branches of the federal government, as well as between the federal government and the states. The carefully crafted balance between those sources of power is one of the lodestars of our republic. Our Constitution relies on each branch of government checking and limiting the power of the others, and on a similar relationship between the federal government and the states. The PEPPER Act would discard nearly 250 years of constitutional governance, allowing the executive branch to run roughshod over the other branches and the states. Such an outcome would be deeply offensive to the vision of republican governance the Founders created.

We strongly urge members of Congress to reject this attempted step toward making the president a king, and to vote against the PEPPER Act.

² Laura Kelly, *Trump administration considering criminal referrals in USAID fight*, The Hill (Mar. 5, 2025),

<https://thehill.com/policy/international/5178414-trump-administration-usaid-criminal-referrals>.

³ Sudiksha Kochi, *Who did Donald Trump pardon? What to know about Charles Kushner, Steve Bannon, other top allies*, USA Today (Dec. 2, 2024),

<https://www.usatoday.com/story/news/politics/elections/2024/12/02/trump-pardoned-during-first-term/76705964007>.

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Kind regards,

Accountable.US
Auntie's Coalition
Bend the Arc: Jewish Action
Center for Common Ground
Citizens for Responsibility and Ethics in Washington
Clean Elections Texas
Clearinghouse on Women's Issues
DemCast USA
Democracy 21
Faithful Democracy
Faiths for Safe Water
Feminist Majority Foundation
Free Speech for People
Georgia Coalition for the People's Agenda
Houston Immigration Legal Services Collaborative
Illinois Accountability Initiative
Impact Fund
Indivisible
Interfaith Alliance
Jobs With Justice
Just Solutions
League of Conservation Voters
Muslim Advocates
National Women's Law Center
NETWORK Lobby for Catholic Social Justice
Oregonizers
Peace Action
People For the American Way
People Power United
Project On Government Oversight
Public Citizen
Reboot Our Democracy
RepresentUs
Stand Up America
The National Vote
The Workers Circle
Transformative Justice Coalition
Unitarian Universalists for Social Justice
Unity Church of San Leandro