



# Biden has the power to restore good governance

BY RICHARD E. LEVY AND ROBERT L. GLICKSMAN, OPINION CONTRIBUTORS — 02/20/21 02:00 PM EST  
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Since taking office, President Biden has pursued an active agenda to address many urgent matters that require his prompt attention. We hope one important initiative does not get lost in transition: restoring the norms of good governance.

During his term in office, President Trump sought to exert absolute control over the apparatus of government by undercutting normal operating practices and systematically dismantling protections for officials whose duty to the public might override their personal loyalty to him. It is no secret that Trump demanded personal loyalty from executive branch officials and fired those, like Attorney General Jeff Sessions, who prioritized complying with the law over following his orders. He has taken many actions to strip, override and undermine essential protections for our nation's public servants.

Biden has already taken some steps to address these concerns. On Jan. 22 he signed an executive order to restore civil service protections, including merit selection and good cause removal protections, for thousands of hardworking federal employees. This much needed action reversed Trump's earlier executive order removing these protections, which had exposed these positions to patronage and political retaliation. While reversing this order and others issued by Trump is a good start, many other problems remain.

Trump also abused a federal statute governing interim appointments, regularly evading Senate advice and consent and installing loyalist "acting" officers whose tenuous positions made them easy to control. At one point last year, the Department of Homeland Security (DHS), Department of Defense (DOD) and Department of Interior (DOI), the Small Business Administration (SBA), the White House Office of Management and Budget (OMB) and the United Nations ambassador's office were all led by acting heads. Courts have invalidated the appointments of some acting officials, including the secretary of the DHS finding that they flouted legal requirements.

In addition, Trump retaliated against officials who fulfilled their legal obligations by reporting misconduct, including inspectors general who serve as independent watchdogs over federal agencies. At one point in

2020, he [fired](#) in short order inspectors general at several Cabinet departments: Department of State (DOS), DOD, Department of Transportation (DOT) and the Department of Health and Human Services (HHS). He also fired the inspector general for the intelligence community for alleged disloyalty. The removal of these watchdogs made it more difficult to identify wrongdoing and reduced the administration's accountability to Congress and the public.

As administrative law scholars and proponents of good governance, we have watched these autocratic actions and the resulting degradation of government unfold with dismay. In a recent [article](#), we assailed the politicization of administrative law judges who preside over important agency cases, such as those involving Social Security disability claims and regulatory enforcement actions.

Through various [actions](#), including another executive order, the Trump administration exempted these judges from merit-based hiring and sought to weaken protections against discipline and removal of judges who do not decide cases in accordance with the wishes of the agency's political leaders. The Trump administration's [proposed rules](#) to replace merit-based with political appointments did nothing to restore these judges' independence.

Similar concerns remain across the executive branch, as reflected in agency actions that ignored evidence in the record, violated statutory procedures and offered dubious justifications for unlawful agency actions. The Supreme Court, for example, [blocked](#) the Commerce Department's alarming effort to add a question to the census concerning citizenship status because its explanation for doing so was "pretextual" and "contrived" in an effort to hide the real reasons for the action, which were discriminatory and probably unconstitutional.

Fortunately, Biden can quickly restore principles of good governance in the executive branch. He has already revoked a number of Trump's executive orders and he can take other actions within the executive branch to restore these principles, such as allowing agency inspectors general to perform the independent oversight role for they were created.

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Legislation is needed to achieve more lasting results, however, including protecting adjudicatory independence, preventing abuse of interim appointments and shoring up protections for watchdogs and whistleblowers. If any initiatives can draw bipartisan support in this era of hyperpartisanship, these initiatives should. Democratic leaders were [appalled](#) by Trump's efforts to subject the executive branch to his whims, and Republican leaders presumably have strong incentives to prevent Biden from doing the same.

By acting quickly to restore the capacity of dedicated public officials to serve the public interest without fear of political reprisal, the Biden administration can simultaneously respond to the nation's immediate needs and lay the foundation for a well-functioning executive branch that merits the public's trust.

*Richard E. Levy is the J.B. Smith Distinguished professor of Constitutional Law at the University of Kansas School of Law. Robert L. Glicksman is the J.B. & Maurice C. Shapiro professor of Environmental Law at the George Washington University Law School and a Member Scholar at the [Center for Progressive Reform](#).*

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