

April 28, 2022

Dear Chairman Clyburn, Ranking Member Scalise, and members of the Subcommittee:

On behalf of the Brennan Center for Justice at New York University School of Law, I write to offer our perspective on scientific integrity at our nation's public health agencies.<sup>i</sup> We applaud you for taking up this important issue. As documented in *HHS Agencies Need to Develop Procedures and Train Staff on Reporting and Addressing Political Interference*, a new Government Accountability Office (GAO) report on which Brennan Center staff consulted, several Public Health Service agencies have grappled with politicization of research and data, threats and retaliation against scientists, and other scientific integrity abuses during the Covid-19 pandemic.<sup>ii</sup> It is essential that Congress continue its oversight to combat these problems and that both the executive branch and Congress create stronger safeguards to prevent them from recurring. Public trust, democratic accountability, and the future of the federal government's scientific enterprise are all at stake.

*Threats to Scientific Integrity during the Covid-19 Pandemic*

During the Trump administration, political officials repeatedly censored scientific research and data and attacked government scientists who advised on the federal response to the pandemic.<sup>iii</sup> Administration officials manipulated and suppressed public health guidance from the Centers for Disease Control and Prevention (CDC) about, among other things, schools, testing, and masks.<sup>iv</sup> Dr. Nancy Messonnier, then the director of the National Center for Immunization and Respiratory Diseases at the CDC, was sidelined and nearly fired after she predicted that the coronavirus would have a severe impact on daily life.<sup>v</sup> Dr. Rick Bright, who was the chief of the Biomedical Advanced Research and Development Authority, was reassigned after suggesting that hydroxychloroquine, a drug President Trump touted, should undergo additional research before being used to treat Covid-19 patients.<sup>vi</sup> At various points, the president and other administration officials prevented National Institute for Allergy and Infectious Diseases Director Dr. Anthony Fauci from communicating with the public, threatened to fire him, and disparaged his scientific judgment publicly.<sup>vii</sup> Additional misconduct is detailed in the Brennan Center's tracker of abuses that thwarted the country's response to the pandemic.<sup>viii</sup>

Moreover, pandemic-related scientific integrity issues have not been confined to the federal government. Indeed, political officials have suppressed and manipulated Covid-19 data and retaliated against public health experts in state and local governments across the country. Former New York Governor Andrew Cuomo's administration underreported the death toll from Covid-19 among nursing home residents in the state by as much as 50 percent.<sup>ix</sup> In Missouri, the governor's office buried data showing that mask mandates are effective in reducing transmission of the coronavirus.<sup>x</sup> The mayor's office in the District of Columbia deleted data indicating a

spike in community spread as it pursued a plan to reopen businesses.<sup>xi</sup> And at least two scientists working for the state government in Florida were allegedly removed from their positions due to their scientific conclusions, while others were prevented from publishing their research.<sup>xii</sup>

In a welcome move, President Biden issued a scientific integrity memorandum within a week of taking office, and the White House Office of Science and Technology Policy (OSTP) released a report from its Scientific Integrity Task Force in January of this year that laid out many recommendations to strengthen, and improve the administration of, scientific integrity policies, including scientific integrity training, resources for scientific integrity officers, and enforcement of consequences.<sup>xiii</sup>

Even this administration's handling of the pandemic has attracted its share of controversy, however. While there are no reports of the Biden administration engaging in data manipulation, retaliation against scientists, or similar abuses, the administration has been accused of succumbing to political pressure to reduce CDC-recommended isolation periods for infected individuals over the objections of affected groups, such as nurses and flight attendants.<sup>xiv</sup> The White House has also clashed with scientists at the Food and Drug Administration (FDA), two of whom resigned last August over what they claimed was a rushed process to authorize booster shots despite a lack of evidence to support their medical necessity at the time.<sup>xv</sup> Such policy disagreements are not necessarily indicative of scientific integrity violations, but they illustrate the importance of strong safeguards to ensure that when policymakers do weigh other factors alongside scientific advice, they do so as part of a transparent process, the merits of which key stakeholders and the broader public can judge for themselves.

### *Preventing Threats to Scientific Integrity*

As the discussion above illustrates, political interference in the government's scientific endeavors is a persistent problem and ongoing risk. And while policymakers often have to make decisions based on competing considerations, as well as incomplete data, it is never acceptable to manipulate data or pressure experts to change their findings in order to create a false basis for a preferred policy outcome. Even absent such abuses, strong scientific integrity protections help ensure that policymakers have access to the best research and data available at the time and allow the public to more accurately assess how this information has factored into the decisions that govern all of our lives.

Scientific integrity policies, which federal agencies have maintained since the Obama administration, are critical safeguards in this regard.<sup>xvi</sup> But as GAO's report highlights, many such policies have shortcomings.<sup>xvii</sup> The GAO and OSTP Task Force reports contain a number of excellent recommendations to strengthen scientific integrity policies at public health agencies and across the federal government, respectively. We hope that the Biden administration will seriously consider and, in many cases, adopt them and the other recommendations discussed below. Ultimately, however, Congress must pass legislation to make safeguards against abuse permanent.

## *Brennan Center Recommendations to Safeguard Scientific Integrity*

In a series of reports, the Brennan Center has crafted a number of policy proposals to protect scientific integrity in the federal government.<sup>xviii</sup> These recommendations are informed by the work of our National Task Force on Rule of Law & Democracy, a group of former senior government officials who have served in both Republican and Democratic administrations, including as the heads of agencies that perform scientific research and use it in policymaking.<sup>xix</sup> The Task Force has informed our view of the actions both Congress and the administration should take to ensure that abuses arising in the course of the government's Covid-19 pandemic response are fully addressed.

### Legislation

As the GAO and OSTP reports make clear, robust scientific integrity standards and procedures are needed across the federal government. The Obama and Biden administrations have issued memoranda articulating scientific integrity principles, but legislation is needed to make them permanent. The Scientific Integrity Act, introduced by Representative Paul Tonko of New York in the 117th Congress as H.R. 849, would accomplish this.<sup>xx</sup> The Act would prohibit the alteration and suppression of scientific findings, as well as retaliation against scientists, and it would bar efforts to impede the timely release and communication of scientific findings.<sup>xxi</sup> It would also establish personnel and procedures for investigating scientific integrity issues and mandate scientific integrity training for agency staff.<sup>xxii</sup> The Brennan Center and our bipartisan Task Force have endorsed the bill, which is essential to upholding the federal government's scientific enterprise and restoring public trust in its response to the Covid-19 pandemic.<sup>xxiii</sup> We urge Congress to pass this critical legislation. While the Scientific Integrity Act would have a significant positive impact on evidence-based policymaking, it could be made even stronger by including robust enforcement mechanisms and establishing clear statutory consequences for misconduct.

The Brennan Center and its bipartisan Task Force have also called for Congress to pass additional legislation that would:

- require agencies to establish protocols regulating communications between political officials and career experts;
- safeguard against conflicts of interest, bias in the member selection process, and improper dissolution of science advisory committees;
- codify a presumption of disclosure for completed federally funded research and data, require agencies to establish safeguards against the removal of research and data from public access, and create an enforcement mechanism to ensure compliance, along with remedies for noncompliance; and
- require the disclosure of expert analyses in rulemaking, along with substantive edits made by or at the direction of political officials.

## Executive Actions

While legislation is necessary to establish permanent scientific integrity safeguards, there are many measures the executive branch can and should adopt. Many of these are detailed in the GAO and OSTP reports. Some have already been implemented by the Biden administration, such as its commitment to adhere to scientific integrity principles and reassess the membership of advisory committees.<sup>xxiv</sup> Among the most important additional actions the administration could take:

- implement protocols to ensure that communications between political officials and career experts serve an appropriate function, such as advising policymakers on scientific matters, rather than as a vehicle for intimidation and retaliation;
- establish enforcement mechanisms to hold accountable those who violate agency scientific integrity policies;
- adopt a presumption of disclosure for government-funded research and data, specifying a timeframe within which the information must be disclosed, with protections against suppression and removal of these products from public access; and
- disclose the expert regulatory analysis that underlies agency rulemaking, as well as substantive alterations made by political officials.

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As we enter the third year of the Covid-19 pandemic, it is critical that both Congress and the administration act decisively to rebuild a culture of respect for science in government, not only to grapple with the current pandemic but also to help ensure the long-term ability of federal agencies to protect the health and well-being of all Americans in many different respects.

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, Director, Elections and Government, and Maya Efrati, Public Policy Counsel, if you have any questions or would like additional information.

Sincerely,

Martha Kinsella  
Senior Counsel, Democracy Program

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<sup>i</sup> The Brennan Center advocates for reforms to improve scientific integrity and evidence-based policymaking, as well as to improve government accountability and systems of democracy. Our bipartisan National Task Force on Rule of Law & Democracy, co-chaired by former Environmental Protection Agency Administrator Christine Todd Whitman and former United States Attorney for the Southern District of New York Preet Bharara, has laid out a comprehensive legislative agenda to safeguard against politicization of science and ensure that federal policy decisions are based on evidence and expertise. Preet Bharara, Christine Todd Whitman, et al., *Proposals for Reform*,

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Volume II, National Task Force on Rule of Law & Democracy, 2019, <https://www.brennancenter.org/our-work/policy-solutions/proposals-reform-volume-ii-national-task-force-rule-law-democracy>. The Brennan Center has also issued a set of recommendations for executive actions to safeguard scientific integrity in the federal government. Martha Kinsella et al., *Executive Actions to Restore Integrity and Accountability in Government*, Brennan Center for Justice, 2020, <https://www.brennancenter.org/our-work/policy-solutions/executive-actions-restore-integrity-and-accountability-government>. Additionally, our organization signed on to numerous recommendations for executive actions to restore the critical role of science in federal policymaking in a report published by several organizations. Union of Concerned Scientists et al., *Restoring Science, Protecting the Public: 43 Steps for the Next Presidential Term*, 2020, <https://ucs-documents.s3.amazonaws.com/science-and-democracy/restoring-science-protecting-the-public.pdf>. This letter does not purport to convey the position, if any, of the New York University School of Law.

<sup>ii</sup> United States Government Accountability Office, *HHS Agencies Need to Develop Procedures and Train Staff on Reporting and Addressing Political Interference*, GAO-22-104613 (Washington, D.C.: Government Accountability Office, 2022), <https://www.gao.gov/assets/gao-22-104613.pdf>.

<sup>iii</sup> Martha Kinsella et al., *Trump Administration Abuses Thwart US Pandemic Response*, Brennan Center for Justice, last modified July 26, 2021, <https://www.brennancenter.org/our-work/research-reports/trump-administration-abuses-thwart-us-pandemic-response#s2b>.

<sup>iv</sup> Kinsella et al., *Trump Administration Abuses*.

<sup>v</sup> Kinsella et al., *Trump Administration Abuses*.

<sup>vi</sup> Kinsella et al., *Trump Administration Abuses; OSC Announces Settlement Agreement Between HHS and Former BARDA Director Dr. Rick Bright after his Reassignment*, U.S. Office of Special Counsel, Aug. 9, 2021, <https://osc.gov/News/Pages/20-21-Settlement-Rick-Bright.aspx>.

<sup>vii</sup> Kinsella et al., *Trump Administration Abuses*.

<sup>viii</sup> Kinsella et al., *Trump Administration Abuses*.

<sup>ix</sup> Luis Ferré-Sadurní, “Health Agency under Cuomo ‘Misled the Public’ on Nursing Home Deaths,” *New York Times*, Mar. 15, 2022, <https://www.nytimes.com/2022/03/15/nyregion/nursing-home-deaths-cuomo-covid.html>.

<sup>x</sup> Anita Desikan, “Gagging Scientists in Florida and Missouri to Hide COVID-19 Data,” Union of Concerned Scientists, Dec. 13, 2021, <https://blog.ucsusa.org/anita-desikan/gagging-scientists-in-florida-and-missouri-to-hide-covid-19-data/>.

<sup>xi</sup> Allison Hrabar, “Different Experiences with the Data,” *Drift*, Oct. 21, 2020, <https://www.thedriftingmag.com/different-experiences-with-the-data/>.

<sup>xii</sup> Patricia Mazzei, “A Florida Public Health Official Is Put on Leave after Emailing His Staff to Urge Vaccination,” *New York Times*, Jan. 19, 2022, <https://www.nytimes.com/2022/01/19/us/raul-pino-florida-vaccines.html?partner=slack&smid=sl-share>; Associated Press, “Rebekah Jones Receives Whistleblower Status after Firing in COVID Data Dispute,” *Orlando Sentinel*, June 1, 2021, <https://www.orlandosentinel.com/politics/os-ne-rebekah-jones-whistleblower-status-20210601-y2ffjmg5kjdtlclhppmhivuxku-story.html>; Desikan, “Gagging Scientists.”

<sup>xiii</sup> Restoring Trust in Government through Scientific Integrity and Evidence-Based Policymaking, 86 Fed. Reg. 26 (February 10, 2021), <https://www.govinfo.gov/content/pkg/FR-2021-02-10/pdf/2021-02839.pdf>; Scientific Integrity Fast-Track Action Committee of the National Science and Technology Council, *Protecting the Integrity of Government Science*, Executive Office of the President of the United States, 2022, [https://www.whitehouse.gov/wp-content/uploads/2022/01/01-22-Protecting\\_the\\_Integrity\\_of\\_Government\\_Science.pdf](https://www.whitehouse.gov/wp-content/uploads/2022/01/01-22-Protecting_the_Integrity_of_Government_Science.pdf).

<sup>xiv</sup> Liz Borkowski, “Roundup: Worker Protections Weakened as Omicron Cases Soar,” Union of Concerned Scientists, Jan. 19, 2022, <https://blog.ucsusa.org/science-blogger/roundup-worker-protections-weakened-as-omicron-cases-soar/>.

<sup>xv</sup> Noah Weiland and Sharon LaFraniere, “Two Top F.D.A. Vaccine Regulators Are Set to Depart during a Crucial Period,” *New York Times*, Aug. 31, 2021, updated Sept. 22, 2021, <https://www.nytimes.com/2021/08/31/us/politics/fda-vaccine-regulators-booster-shots.html>.

<sup>xvi</sup> Scientific Integrity, 74 Fed. Reg. 46 (Mar. 9, 2009), <https://www.govinfo.gov/content/pkg/FR-2009-03-11/pdf/E9-5443.pdf>; John Holdren, Director, Office of Science and Technology Policy, “Scientific Integrity” (official memorandum, Washington, D.C.: Executive Office of the President, 2010), <https://obamawhitehouse.archives.gov/sites/default/files/microsites/ostp/scientific-integrity-memo-12172010.pdf>.

<sup>xvii</sup> Government Accountability Office, *HHS Agencies Need to Develop Procedures*; “Scientific Integrity Policies,” Public Employees for Environmental Responsibility, accessed Apr. 27, 2022, <https://www.peer.org/campaigns/whistleblowers-scientists/scientific-integrity/scientific-integrity-policies.html>.

<sup>xviii</sup> Kinsella et al., *Executive Actions*, 12–15; Bharara, Whitman, et al., *Proposals for Reform, Volume II*, 7–14.

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<sup>xix</sup> Bharara, Whitman, et al., *Proposals for Reform, Volume II*.

<sup>xx</sup> Scientific Integrity Act, H.R. 849, 117th Cong. (2021).

<sup>xxi</sup> Scientific Integrity Act, H.R. 849, 117th Cong. § 3 (2021).

<sup>xxii</sup> Scientific Integrity Act, H.R. 849, 117th Cong. § 3 (2021).

<sup>xxiii</sup> “Statement from the National Task Force on Rule of Law & Democracy in Support of the Scientific Integrity Act,” Brennan Center, Nov. 13, 2019, <https://www.brennancenter.org/our-work/research-reports/statement-national-task-force-rule-law-democracy-support-scientific>; “Statement in Support of the Scientific Integrity Act,” Brennan Center for Justice, June 5, 2020, <https://www.brennancenter.org/our-work/research-reports/statement-support-scientific-integrity-act>; “Science Group Urges Passage of Scientific Integrity Act,” Union of Concerned Scientists, Feb. 3, 2021, <https://www.ucsusa.org/about/news/science-group-urges-passage-scientific-integrity-act>.

<sup>xxiv</sup> Restoring Trust in Government through Scientific Integrity and Evidence-Based Policymaking.