

March 16, 2022

Dear Majority Leader Schumer, Minority Leader McConnell, and Members of the Senate:

We, the undersigned groups, representing perspectives from across the political spectrum and concerned about the prevalence of Executive branch-created secret law, urge you to support the DOJ OLC Transparency Act, introduced by Senators Duckworth and Leahy. This bill would require the DOJ to publicly disclose all OLC opinions, with appropriate exceptions for classified material.

The Department of Justice's Office of Legal Counsel (OLC) asserts that its "core function" is providing "controlling advice to Executive Branch officials on questions of law that are centrally important to the functioning of the Federal Government."¹ This advice, memorialized in legal opinions, "may effectively be the final word on the controlling law," yet these opinions are routinely withheld from Congress and the public. Many of us have written previously about why disclosure of OLC opinions is of critical importance.²

Congress's Constitutionally mandated legislative and oversight roles are threatened when Members are not given the opportunity to examine how the laws they author have been implemented by the Executive branch, and the rights of the American people are threatened by the existence of a large corpus of secret law. Recognizing this, in December 2004, nineteen former senior DOJ officials endorsed *Principles to Guide the Office of Legal Counsel*, which recommended timely publication of OLC legal opinions.³ In October 2020, an assortment of legal luminaries contributed to a statement concerning OLC opinions, declaring "OLC should maintain a strong presumption in favor of publishing its final opinions within a reasonable period of time after they have been issued."⁴ The DOJ OLC Transparency Act would provide public and congressional access to OLC opinions, with appropriate redactions, and would address some of the dangers of secret law.

Neither Congress nor the public is aware of the number of OLC opinions currently in effect, much less their legal conclusions. Relying on the Department of Justice to decide whether to release an opinion is fundamentally unworkable. The *status quo* is unacceptable.

The DOJ OLC Transparency Act does not attempt to resolve the policy issues that arise in OLC opinions. Instead, it protects a foundational principle in our democracy: the right of Congress and the public to know how the laws of the land have been implemented by the Executive branch.

We urge you to endorse the effort to bring a modicum of transparency to OLC opinions law by co-sponsoring the DOJ OLC Transparency Act. For more information, contact Ginger Quintero-McCall, Demand Progress legal director, at ginger@demandprogress.org.

¹ Memorandum for Attorneys of the Office, Department of Justice (July 16, 2010)

<https://www.justice.gov/sites/default/files/olc/legacy/2010/08/26/olc-legal-advice-opinions.pdf>.

² Civil Society Letter to Christopher Schroeder, Assistant Attorney General for the Office of Legal Counsel (May 26, 2021)

https://s3.amazonaws.com/demandprogress/letters/Letter_Assistant_Attorney_General_OLC_2021-05-26.pdf.

³ "Principles to Guide the Office of Legal Counsel" (Dec. 21, 2004)

https://scholarship.law.duke.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=2927&context=faculty_scholarship.

⁴ "The Office of Legal Counsel and the Rule of Law," American Constitution Society (October 2020),

<https://www.acslaw.org/wp-content/uploads/2020/10/OLC-ROL-Doc-103020.pdf>.

Sincerely yours,

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