

July 18, 2023

The Honorable Dick Durbin
Chairman
U.S. Senate Committee on the Judiciary

The Honorable Lindsay Graham
Ranking Member
U.S. Senate Committee on the Judiciary

The Honorable Jim Jordan
Chairman
U.S. House Committee on the Judiciary

The Honorable Jerrold Nadler
Ranking Member
U.S. House Committee on the Judiciary

RE: Protect Americans Abroad by Passing the Foreign Extortion Prevention Act

Dear Chairman Durbin, Chairman Jordan, Ranking Member Graham, and Ranking Member Nadler,

As authoritarian and kleptocratic governments like China continue to expand their influence across the globe, Americans working in geopolitically contested regions are increasingly becoming victims of demands for bribes by foreign corrupt officials.¹ As organizations and individuals concerned with the safety of both American workers and American democratic ideals abroad, we urge you to prioritize a simple yet critical bipartisan measure known as the **Foreign Extortion Prevention Act**, or “FEPA”, that would protect Americans from bribe demands, create a level economic playing field for American companies operating abroad, and incentivize foreign governments to clean up corruption in their own backyards.

Current U.S. law does nothing to protect Americans from foreign bribe demands. When U.S. companies can be extorted by foreign officials as a cost of doing business in their countries, it endangers American workers and increases the cost of American companies doing business abroad. Bribery also incentivizes foreign officials to sell off the laws and processes that protect the environment, promote health and public safety, and preserve political integrity in their home countries. In every region of the world, such corruption, over time, sows the seeds of political and economic unrest. And for American businesses, who are legally prohibited by the U.S. Foreign Corrupt Practices Act from giving bribes to these officials, it means that their foreign competitors who are not bound by similar laws can and do supply those bribes in order to win public contracts, licenses, and other business opportunities.

This is not an abstract or hypothetical dynamic. Study after study shows that foreign governments are failing to prosecute in their home countries the companies who *give* bribes to other foreign governments *and* the officials in their home countries who *demand* bribes from other foreign companies. For example, a recent report by Transparency International found that among almost 50 leading export countries, only **two** were actively enforcing in their home countries their laws against companies giving bribes,² and a survey by the OECD found that government officials who had

¹ See Tom Firestone & Maria Piontkovska, “Two to Tango: Attacking the Demand Side of Corruption,” *The American Interest*, Dec. 17, 2018, available at https://www.the-american-interest.com/2018/12/17/two-to-tango-attacking-the-demand-side-of-bribery/#_ftnref10.

² See Transparency International, “Exporting Corruption 2022: Assessing Enforcement of the OECD Anti-Bribery Convention,” 4, Oct. 11, 2022, available at https://images.transparencycdn.org/images/2022_Report-Full_Exporting-Corruption_EN.pdf. The two countries are the United States and Switzerland.

demanded or received bribes were criminally punished by their home countries only 20 percent of the time.³

FEPA is a short, bipartisan amendment to the U.S. federal bribery and gratuities statute (18 U.S.C. § 201) that would make it a crime for a foreign official to demand or accept a bribe from an American or American company in connection with obtaining or retaining business. Such a change would not only allow the U.S. Government to protect U.S. interests beyond our borders, but would also bring U.S. foreign bribery law into the 21st century. Dozens of other countries, including the United Kingdom, Germany, and France have laws that criminalize both the giving and the demanding of foreign bribes. The importance of this two-directional legal framework has been reinforced by the OECD, which found that “[t]o have a globally effective overall enforcement system, both the supply-side participants (i.e., the bribers) and the demand-side participants (i.e., the public officials) of bribery transactions must face genuine risks of prosecution and sanctions.”⁴

These considerations were reflected in the U.S. National Security Council’s *Strategy on Countering Corruption*, which committed to “working with the Congress on new authorities to take on the corruption challenge as it stands today,” including “working with the Congress to criminalize the demand side of bribery by foreign public officials.”⁵

We are committed to working with you to pass this important legislation into law as quickly as possible. Please do not hesitate to contact Scott Greytak, Director of Advocacy for Transparency International U.S., at sgreytak@transparency.org if you have any questions.

Sincerely,

Organizations

Accountability Lab

Anti-Corruption Data Collective

Bekker Compliance Consulting Partners LLC

Citizens for Responsibility and Ethics in Washington (CREW)

EG Justice

FDD Action

Financial Accountability and Corporate Transparency (FACT) Coalition

Foreign Policy For America

Free Russia Foundation

Global Financial Integrity

Global Integrity

Human Rights First

Integrity Initiatives International

International Coalition Against Illicit Economies (ICAIE)

³ See OECD, “Foreign Bribery Enforcement: What Happens to the Public Officials on the Receiving End?” 7, Dec. 11, 2018, available at <https://www.oecd.org/corruption/Foreign-Bribery-Enforcement-What-Happens-to-the-Public-Officials-on-the-Receiving-End.pdf>.

⁴ See *id.* at 9.

⁵ See The White House, “United States Strategy on Countering Corruption,” December 2021, available at <https://www.whitehouse.gov/wp-content/uploads/2021/12/United-States-Strategy-on-Countering-Corruption.pdf>.

Never Again Coalition
Oxfam America
Project On Government Oversight
Sembrando Sentido
The Sentry
Transparency International U.S.
UNISHKA
Visual Teaching Technologies

Prominent Individuals

Charles G. Davidson, Founder and former Executive Director, Kleptocracy Initiative (Hudson Institute)

Clay R. Fuller, PhD, Global Initiative Against Transnational Organized Crime

Jonathan Schanzer, Former US Treasury analyst

Lt Col (ret) Jodi Vittori, PhD, Retired USAF, Co-founder Anti-Corruption Advocacy Network

Nate Sibley, Research fellow, Hudson Institute