



# **CENTER FOR AMERICAN FREEDOM**

*Defending American Freedom*

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By: The Honorable David Bernhardt and James Sherk

America was founded on a consensus that individuals possess inalienable rights, that government exists to protect those individual rights, and government acts only through the consent of the governed. Today that vision has grown increasingly distant. The administrative state now wields concentrated power with limited accountability. Civil service protections empower unelected bureaucrats to make decisions that should arguably be retained for elected officials. And federal regulations frequently replace individual liberty. Meanwhile, the federal government ignores growing threats to American liberties like cancel culture, tech censorship, and state-sanctioned racial discrimination. The Center for American Freedom exists to defend American freedom from both government and non-governmental threats. It will research and develop policies that preserve our freedoms and restore the original vision for a representative government that defends Americans' liberties.



## AMERICA FOUNDED FOR FREEDOM

America was founded on then-revolutionary beliefs about human rights and the role of government. The Declaration of Independence explains:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness --That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed.

Although America has not always lived up to these principles, and in some cases, has horrifically violated them, they have nonetheless guided America since its founding. As the Reverend Martin Luther King, Jr. explained, the “magnificent” ideals of the Declaration of Independence and the Constitution were “a promissory note to which every American was to fall heir” ([King 1963](#)). Belief in these principles has long united Americans across the political spectrum. Unfortunately, this foundational consensus is unraveling ([Pullman, 2020](#)).

## GOVERNMENT ACCOUNTABILITY UNDERMINED

The Founders designed the Constitution to protect the people’s rights and hold the government accountable. They believed that concentrated power was vulnerable to abuse, so they divided federal authority between executive, legislative, and judicial branches ([Madison, 1788](#)). They further required the executive and legislative branches to regularly stand for re-election, holding policymakers accountable to those they govern. And they strictly limited the federal government’s authority, leaving most governing power to state and local government.

The contemporary administrative state circumvents these constitutional protections. The federal government has centralized regulatory power in itself. And regulatory agencies have concentrated legislative, judicial, and executive power within themselves. Agencies now write regulations that have the force and effect of law. They enforce those regulations, and “administrative law judges”—executive branch officers—adjudicate alleged violations. Often, ordinary Americans have little recourse against bureaucratic abuses ([Cooper, 2015](#)).

Federal employee job protections further undermine representative government. These protections can empower career bureaucrats to pursue their preferred policies without regard to the views represented by elected officials. Political scientists have long documented this phenomenon ([Johnson & Libecap, 1994, pp. 156-171](#)). From 2017 to 2020, bureaucratic resistance to the elected President’s policies became so widespread that it made national news ([Eilperin, Rein, & Fisher, 2017](#); [Flavelle & Bain, 2017](#)). When federal employees act inconsistently with the views of the elected representatives, they are undermining the freedom of the electorate. No one elected the bureaucracy to govern ([Stepman & Stepman, 2017](#)).



Concentrated power and bureaucratic unaccountability are easily susceptible to abuses that threaten the freedom of Americans. For example, Department of Interior (DOI) bureaucrats denied a California oyster farm operational permits. They claimed the farm's operations harmed nearby wildlife. The agency, however, manipulated its analyses to reach this conclusion and deliberately withheld its scientific data showing no negative effects. When this deception came to light, DOI nonetheless denied the necessary permit. The oyster farm was shut down, and all of its employees were laid off, despite the strenuous objections of elected Members of Congress ([Ames, 2015](#)).

While some regulation is necessary, the current regulatory burden imposes massive costs on Americans and the economy ([Coffey, McLaughlin, & Peretto, 2016](#)). Excessive regulations at every level of government can make it harder for the American people to pursue their dreams and support their families. Overregulation stifles innovation and entrepreneurship.

Three-fifths of Americans believe unelected government officials have too much influence over federal policy ([Monmouth, 2018](#)). Three-fifths also believe firing federal employees is too hard ([Rasmussen, 2018](#)). In a free society, the government must be accountable to the governed.

## **UNEQUAL BEFORE THE LAW**

At the same time, an intolerant ideology that rejects equal treatment under the law has grown rapidly. Its growth threatens the individual rights of Americans. Some refer to this ideology, which grew out of critical race theory, as “the successor ideology” ([Douthat et al., 2020](#)), while others call it “critical social justice” (“[Critical social justice](#),” 2021). However, it is most commonly called “wokeness” or “being woke.” The woke see society as primarily consisting of intersecting groups of oppressors and oppressed (especially with regard to race and sex), see existing social systems as upholding this oppression, and believe that these social systems must be dismantled. The term woke originally came from slang for having awoken (or woke) to this reality but has since become generally used to describe these beliefs ([Lindsay, 2020](#)).

Woke ideology rejects many of the principles of America's founding. Wokeness rejects the idea that individuals have equal rights and therefore, must be treated equally under the law. Woke activists believe racism is primarily structural—built into how society is organized—and thus occurs at the group level ([DiAngelo and Dyson, 2018, pp. 19-22](#)). Consequently, they generally support racial discrimination to counterbalance group power differences and equalize group outcomes. As Dr. Ibram X. Kendi argues, “[t]he only remedy to racist discrimination is anti-racist discrimination. The only remedy to past discrimination is present discrimination. The only remedy to present discrimination is future discrimination” ([Kendi, 2019, p.19](#)).



Wokeness and critical race theory have spread rapidly. Many government agencies like the Federal Bureau of Investigation, Department of Homeland Security, and Treasury Department have inculcated these concepts in their employees ([Rufo, 2020](#)). Over 12 percent of parents report public schools are teaching wokeness to their children ([Parents Defending Education, 2021](#)). It has also become widespread through academia, the media, and major corporations ([Eberhart, 2021](#); [Kennedy, 2021](#); [Rufo, 2020](#); [Rufo, 2021](#); [Weiss, 2021](#)).

Some woke-inspired government programs now engage in racial discrimination. For example, the Biden Administration is prioritizing limited COVID-19 restaurant relief funds on the basis of race and sex, accepting applications from women and minority-owned restaurants before those owned by non-minority men ([Small Business Association, 2021](#)). The University of Minnesota Health Services—a public entity—used race to determine eligibility for COVID-19 vaccines. The health service prioritized vaccinating Hispanics and African Americans over most Asian Americans and Caucasians.<sup>1</sup> This delayed some Minnesotans from receiving potentially life-saving treatment solely because of their race ([Staff writer, 2021](#); [Hinderaker, 2021](#)). Instead of protecting American’s rights, forces within the government now discriminate against Americans based on immutable characteristics.

## **CANCEL CULTURE & TECH CENSORSHIP THREATEN FREE SPEECH**

The federal government has also largely ignored growing non-governmental threats to the freedom of Americans. Americans have historically considered concentrated government power the primary threat to their freedom ([Mendes, 2011](#); [Pew Research Center, 2013](#)). Concentrated corporate power is now also emerging as a threat. Nowhere is this clearer than emerging corporate threats to free speech.

Americans have traditionally cherished free speech, seeing it as essential to ensuring that the truth ultimately prevails in the contest of ideas ([Ekins, 2017](#); [Wike, 2016](#)). In his first inaugural address, Thomas Jefferson proclaimed that in America, “error of opinion may be tolerated where reason is left free to combat it” (Cunningham, 2001, p. 5).

This consensus is fraying.<sup>2</sup> An increasingly intolerant “cancel culture” now seeks to punish disagreement instead of debating it. Many employers now police their employee’s private speech, firing workers who express controversial views. Cancel culture particularly targets disagreement with woke orthodoxy. As a result, deviations from wokeness—or even failure to embrace it—have cost many Americans their jobs. For example:

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<sup>1</sup> The University of Minnesota, in partnership with the Fairview health system, explained, “we are prioritizing vaccinations for people who identify as one or more of the following groups: Black/African, American Indian/Alaskan Native, Southeast Asian, Pacific Islander/Native Hawaiian, and Latinx/Hispanic” ([Staff writer, 2021](#)). These criteria exclude Asians Americans of Chinese, Japanese, or Korean descent, as well as Asian Americans from the Indian subcontinent.

<sup>2</sup> Many of the woke see free speech as enabling the larger system of oppression they oppose. For example, Derrick Bell—one of intellectual fathers of Critical Race Theory—argued that:

[P]roclaiming that ‘I am committed equally to allowing free speech for the KKK and 2LiveCrew’ is a non-neutral value judgment, one that asserts that the freedom to say hateful things is more important than the freedom to be free from the victimization, stigma, and humiliation that free speech entails ([Bell, 1995, p. 902](#)).

- Rafaela Espinal, a black New York City public school superintendent, was fired after refusing to make the “Wakanda Forever” salute widely taken as a symbol of black power ([Deese, 2021](#)).
- Antonio Garcia-Martinez wrote “Chaos Monkeys”—a tongue-in-cheek memoir of life in the tech industry. The 2016 book was widely acclaimed, becoming a New York Times bestseller and selected as a National Public Radio “book of the year.” However, Apple recently fired Garcia-Martinez following employee protests that parts of his book were sexist. Apple employees particularly objected to his description of most Bay Area women as “soft and weak” while praising a former girlfriend he considered strong and capable ([Chaffary, 2021](#)).
- CBS fired Sharon Osbourne from the daytime TV show “The Talk” for defending her friend Piers Morgan from charges of racism. Morgan had been recently fired for questioning Meghan Markle’s accusations of racism in the Royal Family ([D’Zurilla, 2021](#)).
- Tiffany Riley, the principal of Windsor High School in Vermont, was fired for saying that she believed black lives matter but disagreed with how activists were making that point ([Associated Press, 2020](#)).
- Grant Napear, the longtime play-by-play announcer for the Sacramento Kings, was fired for tweeting “All Lives Matter ... Every Single One!” in response to a question about the Black Lives Matter movement ([Fischer, 2020](#)).
- Niel Golightly, Boeing’s senior vice president for communications, resigned after discussions with Boeing leadership when a 1987 article he wrote arguing against women in combat became public ([Brest, 2020](#)).

Polling shows a majority of Americans are concerned they would be fired if they expressed their opinions online ([Manchester, 2021](#)). These fears are reasonable. A survey of people with hiring responsibilities found that about one-fifth said they had not hired job candidates because of their political beliefs ([Airtasker, 2019](#)). The federal government has done little to protect American’s free speech from cancel culture.

The major technology companies that control online communications platforms are also threatening free speech. By banning users or views, they can effectively remove matters from the modern public square. Technology companies are using this power to suppress views they disapprove of. After the 2020 elections, these firms have not even attempted to hide their censorship, openly de-platforming former President Trump while still in office. Facebook and Instagram subsequently extended their ban to “content posted in the voice of Donald Trump” and are taking down video interviews of the former President ([BBC News, 2021](#)). Pew Research Center finds that three-quarters of Americans believe social media



companies intentionally censor viewpoints they find objectionable ([Vogels, Perrin, and Anderson, 2020](#)).

America has long been known as “the land of the free.” Polling, however, shows over three-fifths of Americans now feel they cannot express some of their beliefs in public ([Ekins, 2020](#)). Private corporations are increasingly dictating what beliefs Americans can and cannot articulate publicly. This severely threatens Americans’ freedom of speech.

## **PATH FORWARD**

Federal and state governments can protect Americans’ freedom from these threats. The administrative state and regulatory processes can be redesigned to ensure government operates by the consent of the governed and regulations do not excessively impede individual liberty and American ingenuity. Federal job protections that impede employee accountability can be eliminated.

The Constitution requires the government to protect all Americans equally. The government may not lawfully engage in or promote racial or sexual discrimination. Free speech can be protected. The government can prevent technology companies and cancel mobs from determining who can or cannot speak in the public square. America can become again a country where citizens can freely debate their views.

However, the Biden Administration is moving policy in a different direction. While the Trump Administration prevented federal agencies from promoting critical race theory, the Biden Administration’s first executive order rescinded this directive ([Exec. Order No. 13985](#)). The Biden Administration also rescinded President Trump’s order combating online censorship ([Exec. Order No. 14029](#)). President Biden further rescinded Trump Administration executive orders that protected Americans from bureaucratic abuses ([Exec. Order No. 13992](#)) and made firing federal bureaucrats easier ([Exec. Order No. 14003](#)).

## **POLICY PRIORITIES**

The America First Policy Institute’s (AFPI) Center for American Freedom will develop and promote policies that protect the American people’s rights and restore the Founder’s vision for the American government. Such policies include:

- *Holding the bureaucracy accountable.* AFPI will research and develop policies making it substantially easier for elected officials to dismiss under-performing or intransigent government employees.
- *Preventing bureaucratic abuses.* AFPI will research and develop policies to prevent bureaucratic bullying and reduce the ability of regulatory agencies arbitrarily to wield power against citizens or small businesses. This will include continuing the



Governors' Initiative on Regulatory Innovation ([White House, 2019](#)) to drive sound regulatory policies at every level of government and limiting the use of guidance documents to unilaterally impose legal requirements on Americans.

- *Reducing Crony Capitalism.* At times, the government provides special carve-outs from the law to a few while obtaining special subsidies. Such crony capitalism hurts the economy and unfairly disadvantages those unable to petition the government ([Zywicki, 2015](#)). AFPI will continue to research and develop policies that serve to devolve power back to the people and the states instead of the well connected.
- *Preventing discrimination on the basis of immutable characteristics.* The 14th amendment guarantees Americans equal treatment under the law. Unfortunately, woke influences are causing elements of the government to ignore these protections and discriminate against Americans based on their innate characteristics. AFPI will research and develop policies to protect Americans from such discrimination. This will include researching potential measures to ensure tax dollars do not promote the woke beliefs that encourage such discrimination.
- *Protecting freedom of speech from cancel culture.* AFPI will develop policies to protect freedom of expression from cancel culture. Punishing Americans for expressing or arguing for beliefs others consider “politically incorrect” arguably undermines America’s culture of free speech.
- *Protecting free speech from tech censorship.* AFPI will develop policies to protect open debate on the internet and social media. This will include policies to address the shortfalls of section 230 of the Communications Decency Act, which immunizes these platforms from liability for removing content ([Communications Decency Act, 1996](#)). It will also include researching and developing state-level policies to protect free speech online and potential Federal Communications Commission regulations that combat tech censorship.

America’s government exists to secure the American people’s rights. The Center for American Freedom will work to ensure it fulfills that mission.

## **AUTHOR BIOGRAPHIES**

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