

## Executive Censorship of Science: Muzzling Federal Researchers, Thwarting the Public's Right to Know, and Impairing Trust in Government

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Interference with the communication of information to Congress, the press, and the public by the executive branch of the government is, unfortunately, all too common in the U.S. (McAllister, 2017). Regardless of the rationale, when federal officials control the flow of taxpayer-funded information from government agencies to the “outside,” the state essentially dictates the content, extent, and tone of publicly disseminated information about policies, processes, and information gathered and generated by government agencies. These actions circumscribe citizens’ informed participation in their democracy. Americans understand the need for confidentiality when communication clearly involves national security issues, but when that secrecy rises to the level of censorship of constitutionally protected speech, “secrecy compromises public knowledge and scrutiny of governmental policies and actions, while also barring the media from fully serving the public interest” (Maret & Goldman 2009, p. xvii). A lack of government transparency, such as the deliberate withholding of scientific research from the public, is a major contributor to low levels of trust in government (Park & Blenkinsopp, 2011).

We do not approach this topic from the perspective of federal workers’ freedom of speech and the government’s obstruction of that right. Instead, we advance a complementary premise from the perspective of the receivers of constitutionally protected speech: the public. This investigation looks specifically at executive-branch suppression of scientific research, which the Trump Administration’s recent “gag orders” have brought to the forefront of discussion.

Publicly funded science is frequently held hostage for purposes of partisan political expediency and to control those opposed to administration perspectives and policies. Foerstel

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(1993) examines the emergence of the government as chief benefactor of scientific research and calls the result “secret science” (p. 113). From government influence exerted to block the teaching of evolution in the public schools (*Epperson v. Arkansas* 1968), politicized anew during the Reagan Administration, to the insistence by the George W. Bush Administration that, contrary to the latest social scientific studies, condom use promoted teenage sexual activity, “inconvenient truths” (Bischoff, 2002) have been kept from the electorate (DeGette, 2008). The concealment of scientific data from public scrutiny undermines the public’s right to know, erodes confidence in government once censorship is revealed, and jeopardizes public health (Lee, 2008).

A high level of trust in the democratic process is critical because it is related to obedience to law, political engagement, and voting, a critical finding we will show (Putnam, 2000). On the basis of common-law treatment of the First Amendment’s prior restraint principle, the precepts of the public’s right-to-know doctrine, the uniqueness of scientific communication, and the Freedom of Information Act (FOIA), this paper argues for unambiguous, enforceable, Congressional legal recognition of the constitutional rights of the electorate to see and evaluate the research of government-funded scientists without interference from the government unless a clear and imminent threat to national security exists. In this type of scenario, the appropriate administrative vehicle for checking the flow of information is classification, such that only specified individuals may have access to it (Shea, 2006). The first part of this paper describes the executive branch’s actions following President Trump’s inauguration that sparked our interest in censorship of government-sponsored scientific research. The next parts present the theoretical basis, arguments, hypotheses, results of analysis, discussion, and conclusion.

### Background

This paper was inspired by events that took place shortly after the inauguration of Donald Trump; although the issues discussed span multiple presidencies, the visible and public reaction to the Trump Administration’s executive actions has been unprecedented and thus easily captured by observers such as ourselves. Thus we begin by a brief overview of those events. Donald Trump was inaugurated as the president of the United States on

Friday, January 20, 2017; within three days, his administration had already taken actions that were causing controversy among the science community and public supporters of research. *Pro Publica* and *The New York Times* broke the story of Trump's curb on public communication at several government agencies on Monday, January 23 (Revkin & Eisinger, 2017; Davenport, 2017). Not surprisingly, these two publications were later speared by the Trump Twitter feed and ejected from a White House press conference. By the next day, some sources had already blasted the term "gag order" in their headlines, from "Trump silences government scientists with gag orders" to "People are outraged about Trump's so-called 'gag order' on government scientists" (Chen, 2017; Colman, 2017). Trump is not the first president to put restrictions on the external communication of government agencies while cabinets are built and appointments made or for the purpose of gaining control over the framing of discourse about politically sensitive issues. The press, however, already irritated with the attitude of a new president toward the media, splashed this news over their front pages for more than a week, spurring a public response that continued to grow.

The orders actually involved internal memos, not directly from Trump but from authors often unidentified and rarely quoted. The memos were eventually confirmed to have been sent within just two government agencies, the EPA and the USDA's Agriculture Research Service (ARS), despite early erroneous reports that agencies affected also included NASA, NIH, Department of the Interior, and CDC (Eilperin & Dennis 2017; Hohmann, 2017; Lynn, 2017). The memos gave unclear directives, interpreted in the press as ranging from a ban on social media (Colman, 2017) to a freeze on grants and contracts (Revkin & Eisinger, 2017) to the prevention of news releases (Davenport, 2017) and even peer-reviewed articles (Eilperin & Dennis, 2017).

The *Washington Post* alone seemed to have access to original memo text and published the following from the USDA original notice:

In order for the Department to deliver unified, consistent messages, it's important for the Office of the Secretary to be consulted on media inquiries and proposed responses to questions related to legislation, budgets, policy issues, and regulations. Policy-related statements should not be made to the press without notifying and consulting

the Office of the Secretary. This includes press releases and on and off the record conversations. (Eilperin & Dennis 2017)

An additional memo credited to ARS chief Sharon Drumm stated tersely, “Starting immediately and until further notice, ARS will not release any public-facing documents. This includes, but is not limited to, news releases, photos, fact sheets, news feeds, and social media content” (DelReal, 2017). Within a day, the USDA had rescinded the original memo and struggled to clarify it (DelReal, 2017; Reuters, 2017). Michael Young, USDA deputy administrator, sent a three-page clarifying memo indicating that the communication that must be reviewed included policy-related statements in press releases and interviews, not peer-reviewed papers (DelReal, 2017; Eilperin & Dennis 2017). However, even if peer-reviewed papers are exempt, such papers are largely inaccessible to the public due to the expensive subscriptions required to read most scientific journals; therefore communication was effectively blocked from the majority of agencies’ public-facing outlets (Chen, 2017).

Although the Trump Administration’s moves were not unusual, the press stressed negative reactions first and acknowledged this use of executive power as business-as-usual only much later in its reporting. Myron Ebell, who ran the EPA transition for the incoming administration, was quoted in *ProPublica* as saying that the “actions were not unprecedented” and that “This may be a little wider than some previous administrations, but it’s very similar to what others have done” (Revkin & Eisinger, 2017). *The New York Times* did include anonymous quotes from EPA employees and officials who argued that “such orders were not much different from those delivered by the Obama administration as it shifted policies from the departing White House of George W. Bush” (Davenport, 2017).

*The Verge* reported that the memo at the Agriculture Department was modeled after the one written by Obama’s agriculture secretary, Tom Vilsak; back in 2009, Vilsak wrote nearly the same words used in the anonymous USDA memo cited above (Davenport, 2017). So why the different reaction to the same words in 2017? The department secretary positions are not apolitical. With appointments such as the new EPA secretary, Scott Pruitt, and Sonny Perdue, the new Agriculture secretary, who have unabashedly expressed opposition to the main functions and missions of the very organizations they lead, the secretary becomes a rather questionable single approval point for external communication. In addition, Vilsak’s

statement did not take into account agency social media accounts, which have grown in importance since his time. The “fact that they come as departments have been communicating through an array of digital platforms has made the changes particularly visible” (Elperin & Dennis, 2017). But so far, the memos themselves seem to fall within legal, if not entirely ethical, acceptance, and the Trump Administration’s actions are sure to be intensely watched by the press, the public, and scientists. Given this visible example, we now turn to the general issues that apply to a number of presidential administrations.

### Theoretical Foundations and Relevant Literature Review

#### The Public’s Right to Know

The history of the fundamental belief in the public’s right to know can be traced to the earliest days of the republic. In his first inaugural address in 1801, Thomas Jefferson declared, “The diffusion of information and the arraignment of all abuses at the bar of public reason, I deem [one of] the essential principles of our government, and consequently [one of] those which ought to shape its administration.” The fear of malfeasance at the highest levels of government was a holdover from actions taken by the British monarchy. To this day, the fear persists, and justifiably so, considering the withholding of scientific information by presidents since Harry Truman. Unfortunately, the fear of this common executive-branch activity became even more salient, and perhaps most damaging, during the Reagan and both Bush Administrations (Foerstel, 1993; Kaplan, 2004). Censorship of scientific research and failure to respond to FOIA requests continued through the Obama Administration, leading to a record number of lawsuits against the government, despite the president’s many assurances that his administration would be the most open and publicly accountable in the history of the nation (American Presidency Project, 2007; Thacker, 2013).

And, now, the Trump Administration, which was already the defendant in more than 50 federal lawsuits just two weeks into Trump’s presidency, is already showing signs that it might exceed Obama’s tally (Rose & Yesko, 2017). As of the start of May, when Trump had marked fewer than five months in office, the *Boston Globe* was reporting the president’s behavior and/or policies had triggered 134 non-FOIA suits in federal court, almost 200%

more than his three predecessors combined in commensurate time periods (Viser, 2017). FOIA-specific lawsuits are discussed below.

The concept of the public's right to know, or more specifically, the principle of transparency in public institutions, received the Supreme Court's imprimatur in *Richmond Newspapers v. Virginia* (1980). According to a summary of the decision: "The Court held that the First Amendment encompassed not only the right to speak but also the freedom to listen and to receive information and ideas. . . . The Court emphasized that "certain unarticulated rights" were implicit in enumerated guarantees and were often "indispensable to the enjoyment of rights explicitly defined" (*Richmond Newspapers v. Virginia*, 1980, p. 980). This is Emerson's (1976) "reverse side of the coin from the right to communicate" (p. 2); that is, the right to see, read, and hear information and, concomitantly, the right to acquire information for the purpose of comprehending, commenting upon, and sharing with others in public forums. These are "communicative mechanisms or speech activities" that promote the "three values [truth, democracy, and autonomy] most essential to meriting constitutional protection" (Sarapin & Morris, 2014, p. 140).

Of course, the most obvious, if not the most persuasive, argument for the public's right of access to government-controlled scientific research findings is that Americans' taxes pay for it in the form of grants and contracts to the tune of just under \$70 billion annually. That is, we, the people, own the research (Hourihan & Parkes, 2016). Rest & Halpern (2007) provide some of the best justifications for the people's right to know about the research funded by our tax dollars. Our government agencies depend on independent scientific discovery and knowledge to develop health-related policies, regulations, and guidelines to improve the health and safety of America's citizens. The authors assert, "The legitimacy, authority, credibility, and acceptability of our public policies depend on the public's trust in the validity of the processes that produced them," (n.p.). Some of the familiar U.S. public health issues that have been negatively affected by political interference in science are: (a) climate change; (b) AIDS and HIV; (c) lead poisoning in children; (d) mercury pollution; (e) use of condoms and pharmaceutical birth control; (f) Zika virus; (g) endangered species; and (h) human papillomavirus (HPV) vaccines (Rest & Halpern, 2007).

Elected officials in the executive and legislative branches have used personal religious beliefs, lobby influence, business interests, and partisan differences to control scientists, suppress and/or misuse scientific data, obstruct or severely circumscribe public access to scientific information, and determine which or how much genuine information is utilized in the development of policies. In 2003, Al Sommer, dean of the Johns Hopkins Bloomberg School of Public Health, learned of a “hit list” of researchers and grants funded by the National Institutes of Health (NIH) created by a religious lobby, whose goal was the defunding of research into drug use, homosexuality, and prostitution (Check, 2003). This kind of behavior results in human morbidity and mortality, consequences incompatible with our nation’s public health mission.

### Scientific Information

The courts have endorsed the principle that scientific knowledge, as a distinct type of communicative information, holds a special place of value in the marketplace of ideas under the First Amendment (*Miller v. California* 1973; *Roth v. United States* 1957; *United States v. U.S. District Court for Central District of California*, 1988; *Board of Trustees of Leland Stanford Junior University v. Sullivan* 1991). Unless taxpayer-funded scientific research findings implicate applications in situations involving national security, the people have a right to know, and the scientists, according to the policies of most government agencies themselves, have a right and an obligation to release peer-reviewed research papers to the press and public within a specified period of time. In *Miller v. California*, a case dealing with obscenity, Justice Brennan asserts: “This is not remarkable, for in the area of freedom of speech and press the courts must always remain sensitive to any infringement on genuinely serious literary, artistic, political, or scientific expression. This is an area in which there are few eternal verities” (1973, n.p.). Similarly, in *United States v. U.S. District Court for Central District of California* (1988), the decision states, “Unless and until the Supreme Court speaks otherwise, we are bound to the view that the constitutional wall against government censorship protects this nether region of public discourse as fully as the *heartland* [author emphasis] of political, literary and scientific expression and debate” (*United States v. U.S. District Court for Central District of California* 1988, n.p.). In *Roth v. United States*, a companion case to *Miller*, Justice Brennan not only advocates for scientific progress but also specifically implicates the press in the

accomplishment of this and other advances by whose communication to the public can check the abuses by government, stating:

The last right we shall mention regards the freedom of the press. The importance of this consists, besides the advancement of truth, science, morality, and arts in general, in its diffusion of liberal sentiments on the administration of Government, its ready communication of thoughts between subjects, and its consequential promotion of union among them, whereby oppressive officers are shamed or intimidated into more honourable and just modes of conducting affairs. (n.p.)

The distinctiveness of scientific information is more clearly articulated in *Board of Trustees of Leland Stanford Junior University v. Sullivan* (1991) (hereinafter, *L. S. J. U. v. Sullivan*). In his opinion, District Judge Harold H. Greene writes, “It is equally settled, however, though less commonly the subject of litigation, that the First Amendment protects scientific expression and debate just as it protects political and artistic expression,” (*L. S. J. U. v. Sullivan*, 1991, n.p.). Kathleen Clark, an ethics expert and law professor at the University of Washington in St. Louis says: “It’s not the case that a government agency through its official organ has an obligation to disclose everything. On the other hand, with respect to government agencies that support scientific research, I believe there are distinct norms and rights to protect the integrity of the scientific research function so that it’s not subject to political interference” (Colman, 2017, n.p.).

#### Legal Precedents for Restrictions on the Dissemination of Scientific Research

*Rust v. Sullivan* (1991), is an important precedent, which created the opportunity for government to place conditions on researchers and the dissemination of research as a condition of receiving government funds. In *Rust*, “the plaintiffs contended, the regulations condition the receipt of Title X funds on the relinquishment of their First Amendment right to engage in abortion advocacy and counseling” (Brody, 1993, p. 454). The plaintiffs also argued that this condition would be a viewpoint restriction in violation of the grantees’ First Amendment rights. However, Rehnquist insisted that conditions were not placed on the grant recipient but on the activities of the specific program: “This is not a case of the Government ‘suppressing a dangerous idea,’ but of a prohibition on a project grantee or its employees from engaging in activities outside of its scope,” (*Rust v. Sullivan* 1991). Rehnquist’s

alternative option, what Brody calls the “non-subsidy’ doctrine” (p. 455), suggests that the grantee may choose to “simply decline a subsidy” and procure funding from a private party, something much more easily said than done.

In addition, in *L. S. J. U. v. Sullivan* (1991), Judge Greene finds that the *Rust* decision contains language that allows for contingencies that should be “restricted by the vagueness and overbreadth doctrines of the First Amendment,” (n.p.). Exemplifying the vagueness of the decision, Greene asks eight questions among which are: “Under what circumstances are preliminary findings regarded as ‘validated’? Who will decide whether the conclusions drawn by Stanford are erroneous, the non-scientist contracting officer? What is meant by the phrase that a report ‘could’ create erroneous conclusions?” (*L. S. J. U. v. Sullivan*, 1991, n.p.).

In addition to violations of free-speech principles, Greene brings attention to the inimical chilling effect of such vague conditions, stating, “a responsible grantee could be certain of not being in violation only if it refrained from publishing any preliminary findings not endorsed by the contracting officer,” giving the officer *unfettered authority* over the scientific authorities (*L. S. J. U. v. Sullivan*, 1991, n.p.). Greene punctuates his decision with this final sentence, which is *chilling* in the extralegal sense: “Even in the Soviet Union, where Joseph Stalin at one time decided what could be published and by whom, the dead hand of government control of scientific research and publication is apparently no more,” (*L. S. J. U. v. Sullivan*, 1991, n.p.).

Brody (1993) comments on *Rust’s* unconstitutional conditions imposed by government contracts: “Taken to its logical extreme, the Chief Justice’s argument would permit the government to ‘buy up’ speech rights of academics and thereby exert enormous control over the flow of ideas in our society” (p. 455). This would result from the speech-related condition that prohibits researchers from disseminating “preliminary unvalidated findings” that “could create erroneous conclusions which might threaten public health or safety if acted upon,” known as a confidentiality clause in a state-sponsored research grant (Brody, 1992, p. 199).

### Prior Restraint and the Press

Redish (1984) cites *Organization for a Better Austin v. Keefe* (1971), as explanation of the principle that has been axiomatic since the Framers wrote the Bill of Rights: “[A]ny prior restraint on expression comes to . . . [the] Court with a ‘heavy presumption’ against its

constitutional validity” (p. 53). In fact, a limit on prior restraint is what the Framers determined to be the very definition of the concept of freedom of the press. It may sound like a simple postulate, but it involves a delicate balance among the individual’s freedom of speech, individual privacy, the public’s right to know—a right not found, but implied, in the Constitution (*Richmond Newspapers v. Virginia*, 1980, n.p.)—and the government’s need to classify information that presents a threat to national security.

Focusing specifically on the effect of executive-branch censorship on the media, prior restraint prevents the press from serving its function as a “watchdog of government activity,” a duty named in *Leathers v. Medlock* (1991, n.p). It is a responsibility that is not just the discovery and reporting of facts, but also the more discriminating act of delving deeply into those facts to evaluate the potential for or actual exercise of abuse of power (Maret & Goldman, 2009; Mermin, 2005). As Mermin (2005) reminds us, the Supreme Court, in *Times-Picayune v. United States* (1953), describes the duties of an independent press to society as “interpreting to the citizen the policies of his government and vigilantly scrutinizing the official conduct of those who administer the state” and “stimulat[ing] free discussion and focus[ing] public opinion on issues and officials as a potent check on arbitrary action or abuse” (p. 929).

### Viewpoint

*Viewpoint-Based Restrictions.* Failing to release information on the basis of viewpoint is unconstitutional. Chemerinsky (2000) asserts:

“Content-based restrictions risk the government targeting particular messages and attempting to control thoughts on a topic by regulating speech. As the Court noted [in *Simon & Schuster, Inc. v. Members of the N.Y. State Crime Victims Board* 1991], ‘[such a restriction] raises the specter that the government may effectively drive certain ideas or viewpoints from the marketplace’” (p. 50).

In cases of presidential censorship, along with the issue of prior restraint comes the problem of the administration advancing a particular perspective in certain policy areas. Bias determines which data to release as is, which to heavily redact, and which to completely withhold. While the scope of this study does not allow for a thorough discussion of the actual reasoning behind viewpoint-based restrictions on speech, it should be noted that, not

infrequently, there are suspicions or evidence of powerful lobby influence through quid pro quo arrangements, and executive-branch conflicts of interest as a result of personal investments or those of friends.

One such example is Dick Cheney, secretary of defense in the first Bush Administration, CEO of Halliburton, and Vice President in the George W. Bush Administration (Biography.com Editors 2016). Cheney gained financially from the war in Iraq through policies supporting the granting of government contracts to Halliburton and its subsidiaries, Enron, and other energy companies. As the head of the task force the National Energy Policy Development Group (NEPDG), Cheney held secret meetings with executives from large international energy corporations, allowing them input into the Bush national energy policy. This strategy protected the fossil fuel industries (Austin & Phoenix, 2005). Cheney claimed executive privilege as his defense as he fought the GAO (General Accounting Office) in court (*Walker v. Cheney*, 2002), over its demand for notes from those meetings (Halstead, 2003). Halliburton Watch, a project of two non-profit, non-partisan organizations, states on its site, “According to the former climate policy adviser in the Environmental Protection Agency, who was present at the task force’s sessions, Cheney ‘continually pushed plans to increase . . . oil supplies while paying little heed to promoting energy efficiency and clean energy sources’” (HalliburtonWatch, n.d., n.p.).

Similarly, in the current administration, conspicuous opposition to climate change research and support instead for traditional energy sources within the executive branch riled environmentalists. They claimed the Trump Administration was “targeting agencies that focus on environmental protection and scientific research” and intended to “suppress communication about science and environmental policy” (Davenport, 2017, n.p.). Subsequent actions, such as the executive orders aiming, for example, to dismantle the Endangered Species Act, advance the Keystone XL pipeline, and disempower, and even dismantle, the EPA, seem to confirm these fears. Trump has used executive orders to ask the EPA to replace the Clean Water Rule, and to roll back climate change policies such as rules for power plant emissions, limits on methane leaks, and the moratorium on federal coal leasing (Green, 2017). A hiring freeze affected almost 500 unfilled EPA jobs; the proposed

budget sought to cut the EPA budget by one-third, for a loss of 3,200 EPA jobs and \$2.6 billion of its budget (Green, 2017).

*Viewpoint Restrictions for Personal or Industry Benefit.* Common law has left the government and those in a position to put pressure on certain government agencies (e.g. the executive branch) in charge of determining the disclosure of scientific research. Could an administration go beyond the violation known as viewpoint discrimination and discriminate based on interests that benefit by blocking the communication of research findings? We need look no further for an example than the connection between cigarette smoking and cancer. Since the 1950s, the tobacco industry has spent vast sums of money and time lobbying Congress and carrying out public campaigns to promote changes to laws and policies affecting research into this connection. For example, they attempted to raise the criteria for risk assessment and data-quality standards for all government-sponsored scientific research, making it more difficult for research to be validated for dissemination to the public. According to Bero's (2005) history of the tobacco industry's efforts to manipulate publicly funded scientific research, the industry and its friends promoted laws which raise standards of data for government-funded research but not for that which is industry-funded. This means that biased industry-sponsored research can be conducted more quickly and disseminated more pervasively than that which comes from taxpayer-sponsored scientists. Other efforts included convincing legislators to allow smoking bans to expire, such as those restricting smoking on airplanes (Lopipero & Bero, 2006). This type of behavior, which runs counter to the public interest and health, continues to this day.

A current example emerges from the Trump Administration. During Obama's second term, government research scientists accumulated a 10,000-page record of studies conducted on three pesticides: chlorpyrifos, diazinon, and Malathion. Numerous experiments found that when used in agricultural applications, these chemicals pose serious risks to every known endangered species (1,800 species that are critically threatened or endangered), and to any humans who come into contact with them, especially farmers (Levin, 2017). Exposure to miniscule amounts of these chemicals has been shown to interfere with the development of children's brains (Kroh, 2017). Federal agencies responsible for the enforcement of the Endangered Species Act indicated they are close to recommending new limitations on the use

of these chemicals, especially on food crops—limitations that would reduce pesticide sales and negatively affect the profits of the chemical companies that produce them (Moore, 2017).

One such company is Dow Chemical, which donated \$1 million to Trump's inaugural celebration. Andrew Liveris, chairman and CEO of Dow and close friend of the president, and two other companies that manufacture the same insecticides, have each sent letters to the heads of three federal agencies asking them to quash their research findings (Biesecker, 2017; Nosowitz, 2017). In March of 2017, newly appointed EPA administrator Pruitt, a litigator for corporations *against* the EPA's initiatives, announced he would be reversing Obama's efforts to ban the use of Dow's chlorpyrifos pesticide on food, claiming the research is not scientifically reliable. Thus, executive power over information is used to further the interest of large donors and lobbies, circumventing the legislative process.

The Trump administration is not the only one to use executive power to favor select corporate agendas. Under the Obama Administration, a Dow Agrosiences representative served as president of the board of directors for the Western Society of Weed Science from 2014–2015, and a representative from both Syngenta and Dow serve on the board of directors of the Weed Science Society of America (WSSA). Those companies donating the most money to these organizations earn the title of “presidential sustaining members” and include the likes of Dow Chemical, Syngenta, Monsanto, Bayer CropScience, BASF Corporation, and DuPont (Orion, 2015). Out of 200 presentations given at the 2011 conference of the WSSA, more than 100 delivered the results of plant responses to herbicides, whereas only four investigations had studied the effects of herbicides on animals or humans. Aviv (2014) writes about this corporate control of policy and quotes David Michaels, the Assistant Secretary of Labor for Occupational Safety and Health from his book, *Doubt Is Their Product*.

Industry has learned that debating the science is much easier and more effective than debating the policy. In field after field, year after year, conclusions that might support regulation are always disputed. Animal data are deemed not relevant, human data not representative, and exposure data not reliable (Aviv, 2014, n.p.).

Slowing the pace of regulation, using dirty tricks to harm the credibility of scientists who find inconvenient results, and ignoring relevant yet unfavorable data that might lead to policies

restricting the manufacture or sales of chemicals harmful to people are the tactics of wealthy stakeholders in multibillion-dollar industries (Aviv, 2014).

FOIA: The Freedom of Information Act

FOIA was signed by Lyndon B. Johnson in 1966 and took effect in 1967 (The National Security Archive, 2016). At the time of the signing, President Johnson delivered a brief statement reinforcing the principle of open and transparent government, saying: “A democracy works best when the people have all the information that the security of the Nation permits. No one should be able to pull curtains of secrecy around decisions, which can be revealed without injury to the public interest” (Johnson, 1966). According to the Department of Justice (DOJ), by law, each request must be acknowledged but not necessarily delivered within 20 business days of receipt of the inquiry (DOJ, 2014). Delivery time depends on the volume of documentation needed, whether the agency requires more information from the requestor, whether the request was directed to the correct department component, the agency backlog of requests in the pipeline, the sensitivity of the information (classification may compel redaction before release), and whether other agencies or department components have a substantial interest in the information requested. Lawsuits filed against the agency from which requests are made but are not acknowledged within a reasonable time are the next step in securing the government information. A large number of lawsuits is indicative of unresponsive agencies.

Since its inception in 2001, the FOIA Project has maintained a public web site of “information about every instance in which the federal government grants or withholds records under the Freedom of Information Act (FOIA)” (FOIA Project, 2017a). One statistic the FOIA Project provides is the number of lawsuits filed to obtain information from departments that do not respond to requests or that grant records that are so redacted as to render them useless in the search for pertinent information. From 2001–2012, the number of FOIA lawsuits filed by media outlets in federal district courts averaged 12 per year, about 3.5% of all lawsuits filed under the FOIA. From 2013 through 2016, the number of media-filed suits shot up to an annual average of 38, a 317% increase in per-year numbers, today comprising about 10% of all suits filed.

To fairly compare the FOIA lawsuit activity in the Trump and Obama administrations, we obtained the number of lawsuits filed against the government during two similar periods in each. These were determined to be the six months of Obama's first year as president between April 1 and September 30 of 2009 and the same six-month period of Trump's first year. This would exclude the period from January 20 to March 30 for each administration, which would include lawsuits filed in response to FOIA requests left unanswered during the prior president's final few months in office. The inclusion of these early months would artificially elevate the number of lawsuits filed in both presidents' first few months. Unfortunately, the earliest year for which we could obtain records for the same months was 2011. The suits filed under the Obama period (April 1 and September 30 of 2011) numbered 180, an average of 30 suits per month. The suits filed under the same time period under Trump numbered 331, an average of 55 suits filed per month and an 83% increase over the Obama period. Obama's second term in office saw a drastic increase in FOIA lawsuits. If we look at Obama's final six months in office, we find that the suits filed were 250, an average of 42 suits per month. The suits filed under the indicated period under Trump numbered 331, an average of 55 suits filed per month and a 33% increase over the Obama period.

Before he was confirmed as EPA head in the Trump administration, Scott Pruitt was asked by the Senate to release thousands of his e-mails with oil and gas companies to determine to what degree his numerous legal actions against the EPA had been influenced by his close connections to energy interests. Senators were interested in how beholden to these businesses Pruitt was. No fewer than 18 times, Pruitt responded to senators by recommending they file open records requests for the information, telling them, "Go FOIA yourselves" (Faber, 2017). A judge ordered Pruitt to release 3,000 documents as part of the confirmation process, but the Republican-majority Senate scheduled the vote on his confirmation a few days before the judge's deadline. Pruitt never released the documents (KFOR-TV and Query, 2017). Pruitt, as the confirmed EPA secretary, now holds the power to approve or deny the release of research information for that agency.

If the rate of FOIA lawsuits filed so far under Trump persists, the filings in 2017, which are expected to number 579, will exceed Obama's final year by 13% and Obama's

penultimate year as president by 12%, indicative of an authority, which does not conform to a commitment to transparency and openness (FOIA Project, 2017b). To put this into context, though, and recalling Obama's pledge of unparalleled transparency, the number of FOIA lawsuits filed during Obama's two terms as president (2009-2016) was 28% higher than the number filed during Bush's two terms (2001-2008) (FOIAProject.com, 2017b).

If large media outlets face difficulty in obtaining constitutionally protected government information, then it makes sense that single journalists would take to the courts with the help of like-minded attorneys to compel the release of agency documents. If members of the public get the impression that investigative reporters are not breaking any new stories about malfeasance in office, it is possible they are unaware of reporters' private efforts to obtain data through legal means that take a great deal of time to accomplish. It is logical, then, that trust in government and confidence and approval of the media could be harmed. Hence, we propose the following two hypotheses:

H1: There will be a negative relationship between trust in government and the number of FOIA lawsuits filed.

H2: There will be a negative correlation between the number of FOIA lawsuits filed and media favorability.

We are interested in exploring whether there would be a significant relationship between the number of FOIA requests and trust in government. However, the analysis of this question is not possible at this time because available data from a number of sources are incomplete and discrepant.<sup>1</sup>

### Trust in Government and in the Media

In *Bowling Alone*, Putnam remarks, "[I]f we think of politics as democratic deliberation, to leave people out is to miss the whole point of the exercise" (2000, p. 40). Citizens must be able to assess two main characteristics of government: (a) the fairness of established procedures and processes by which officials exercise their authority and (b) the trustworthiness of government agents and institutions. Gonzalez and Tyler (2008) point out, "This is important because the effectiveness of legal authorities, law, and government depends upon the widespread belief among its citizens that government is legitimate and entitled to be obeyed" (p. 458). High evaluations of these qualities lead to public perceptions

of government legitimacy and to a respect for a society built upon the values of good citizenship and personally responsible engagement in that society. On the basis of trust affecting citizen participation in the democracy, our next hypothesis is:

H3: There will be a positive correlation between trust in government and voting behavior.

The actions of the executive branch can erode trust in government. For example, Trump's approval rating dropped to a dismal 35% per an Associated Press-NORC survey in June 2017 (Marcin, 2017). In addition, the latest Public Trust in Government numbers from Pew Research verify a continuing downward trend, standing at a near historic low; "only 20% of Americans today say they can trust the government in Washington to do what is right 'just about always' (4%) or 'most of the time' (16%)" (Pew Research Center, 2017). Lack of trust in the Trump Administration during this time may be related to the uproar over the suppression of science from Trump's comments on the campaign trail and from the Administration's imprudent, early handling of the controversy. There was fear that scientific material would be permanently censored from the web sites of the EPA and other agencies, possibly spurred by the removal of "Climate Change" (and other items) from the White House web site in the minutes and hours after the inauguration (Parker & Welch 2017). The EPA was ordered to do the same, and after two decades, the EPA web site is now bereft of climate science (Mooney & Eilperin, 2017). As of this writing, the Trump Administration has refused to counter rumors that it intends to hide a wide variety of scientific research from the public, or prevent it from happening entirely (Davenport, 2017). Such actions provoke reaction.

Findings regarding the relationship between trust in government and trust in the press have varied over time. There is evidence of a negative correlation between the two variables through the 1970s, and yet the evidence from the early 1980s through at least the late 1990s has supported the opposite claim. Bennett, Rhine, Flickinger, and Bennett (1999) state, "Confidence in Congress, the press, and television clearly tend to move downward together," (p. 9) and then further explain: "The 1996 NES [National Election Studies] suggests that if people believe that the media do not fairly cover the political fray, they take a critical view of government's trustworthiness. Thus perceptions of the media and of the government may rise

and fall together.” It is the obligation of the press to provide information to the public that enables the public to execute its responsibility to govern itself and input into the discourse that leads to policy for all Americans. The better the press performs, the greater the ability of the electorate to voice its opinions to elected officials. Justice Potter Stewart (1975) states, “The primary purpose of the constitutional guarantee of a free press was...to create a fourth institution [author note: the Fourth Estate] outside the Government as an additional check on the three official branches” (p. 634). The discovery of this more recent trend that leads to our fourth hypothesis:

H4: There will be a positive relationship between trust in government and public approval of the media.

Unlike prior administrations that used executive power to control government research data, the Trump Administration has provoked an unprecedented reaction, which may, at some later date, demonstrate even less trust in government. This led us to ask the following research question:

RQ1: What will be the reaction from the public and scientists when executive power from an untrustworthy administration is used to suppress scientific research data?

In the following section, we lay out the methodology for this study, including information about the major measures and the sources of our data.

## Methodology

### General Explanation

This portion of our study employed a secondary analysis of publicly available data from respected, reliable polls and government sources, including percentages of Americans who vote in presidential elections, public evaluations of trust in government overall and in institutions specifically, public perceptions of the mass media, and FOIA lawsuits. It also includes qualitative data tracked in the news and on social media for 30 days from the date of the Trump inauguration.

## Major Measures

*Voting.* Data included were the percentages of voting age population (VAP) for each presidential election from 1964 to 2012 inclusive, a total of 13 consecutive presidential elections covering 49 years. The voting statistics were chosen to coincide with the trust-in-government statistics available. We chose to use the VAP instead of the VEP (Voting Eligible Population) because VAP is a more conservative measure. Election data were collected from The American Presidency Project (the University of California). Voting data for the years 1960–2012 were obtained from the Federal Election Commission.

*Trust in Government.* Data for this variable were obtained from a historical index maintained by the Pew Research Center. The final figures are a combination of the percentage of Americans who reported that they trust the government in Washington to do what is right “just about always” and “most of the time.” The two sets of annual statistics used for hypothesis analyses were: (a) a set of 13 data points aligned with each of the 13 presidential elections from 1964 through 2012; and (b) a set of data points denoting each of 21 consecutive years from 1996 through 2016.

*Public Approval of the Media.* The data for this measure represent the percentage of respondents in an annual Gallup poll from 1996–2016 reporting they “have ‘a great deal’ or ‘a fair amount’ of trust and confidence in the mass media ‘to report the news fully, accurately and fairly,’” (Swift, 2016).

*FOIA Lawsuits.* Data for this measure were obtained from The FOIA Project, developed and maintained by the Transactional Records Access Clearinghouse with support from Syracuse University, donor gifts, and grants. Figures were available for the years 2001–2016.

*Public Reaction.* The remarkable reaction to the Trump administration’s suppression of science is explored through data tracked on Twitter, Facebook, and the national news for 30 days, from January 21–February 21, 2017. A brief summary of this qualitative data constitutes this factor.

## Results

The  $N$ s are lower than what we normally see for quantitative statistics for two main reasons. First, we are dealing with yearly statistics over short time spans of available data (e.g., FOIA law suits filed have been recorded yearly only since 2001), and, second, we have analyzed presidential election statistics, which come about only once every four years (hence, a total of only 13 consecutive presidential elections covering 49 years). Figures for trust in government and media favorability are annual statistics available for only 21 years.

Hypothesis 1 proposed there would be a negative relationship between trust in government ( $M = 27.50$ ,  $SD = 10.09$ ,  $N = 16$ ) and the number of FOIA lawsuits filed ( $M = 379.75$ ,  $SD = 66.60$ ,  $N = 16$ ). This hypothesis was supported,  $r = -.67$ ,  $p = .004$ ,  $r^2 = .45$ , on the basis of data from 2001 through 2016. This effect, which is just under a large effect size, shows that as trust in government decreases, the number of FOIA lawsuit filings increases.

Hypothesis 2 predicted a negative correlation between the number of FOIA lawsuits filed ( $M = 379.75$ ,  $SD = 66.60$ ,  $N = 16$ ) and media favorability ( $M = 45.09$ ,  $SD = 5.90$ ,  $N = 16$ ). Analysis of this hypothesis was supported with a large effect size,  $r = -.79$ ,  $p < .001$ ,  $r^2 = .62$ , such that as the number of FOIA suits increases, the public's favorability of the media decreases.

Hypothesis 3 anticipated a positive correlation between trust in government ( $M = 38.92$ ,  $SD = 16.39$ ,  $N = 13$ ) and voting behavior ( $M = 54.83$ ,  $SD = 3.87$ ,  $N = 13$ ). This was supported,  $r = .57$ ,  $p = .04$ ,  $r^2 = .33$  (a medium-sized effect), such that a greater degree of trust in government is associated with a higher percentage of voters coming to the polls to cast ballots.

Hypothesis 4 proposed a positive relationship between trust in government and media favorability. This was supported such that as the public favorability of the media ( $M = 47.17$ ,  $SD = 6.42$ ,  $N = 21$ ) increases, trust in government ( $M = 28.90$ ,  $SD = 9.25$ ,  $N = 21$ ) increases,  $r = .74$ ,  $p < .001$ ,  $r^2 = .55$ . This was found to be a large effect for the data from the 21 years from 1996–2016.

Research Question 1 inquired about what the reaction from the public and scientists would be when executive power from an untrustworthy administration is used to suppress scientific research data. Although, as noted, Trump's moves were not unusual, they resulted

in much more press and public reaction than any other executive in recent memory. Whether one believes that the Trump Administration's actions were business as usual or, as some have called it, a War on Science, the reaction from the public and scientists was immediate and sustained. Within days, both a Twitter response and plans for a march were underway. "I've never seen the scientific community so concerned," said Rush Holt, chief executive of the American Association for the Advancement of Science (Achenbach, 2017, n.p.). What makes the reaction of scientists so surprising is that in general, science organizations are nonpartisan, and science itself is seen as ideologically neutral; scientists, "for philosophical and practical reasons, do not want to be seen as a political community," and they are not known for participating in political protests (Achenbach, 2017, n.p.).

The Administration's actions inspired supporters from across the country to organize the March for Science. The march began as a Facebook suggestion, and became a full-force organizational effort, with a web page, Twitter feed (@ScienceMarchDC), and organizers across the globe. The Twitter account says the April 22, 2017 march "champions publicly funded and publicly communicated science as a pillar of human freedom and prosperity" (@ScienceMarchDC 2017). As of February 27, 2017, the March for Science Twitter account has more than 332,000 followers (@ScienceMarchDC 2017). In addition, as of the same date, 326 satellite marches were announced in the U.S. and other countries (March for Science, 2017).

Another reaction that was immediate a group of *rogue*, or unofficial, government Twitter accounts launched to voice resistance to the Trump administration's actions. Such accounts claim to be tweeting on behalf of unidentified federal scientists, but no one knows for sure the identities of the people posting the tweets (Parker & Welch, 2017). The story of these Twitter accounts began in an unlikely place: the National Park Service. Several tweets, which came from the official Park Service account at the Badlands National Park in South Dakota, invoked the wrath of the Trump administration; the first was about the size of the crowd at the inauguration, and others were about rising carbon dioxide levels in the atmosphere (Achenbach, 2017). The posts ordered to be deleted, but not before the account had gained 60,000 followers (Achenbach, 2017). One follower tweeted back: "The tweets of Badlands National Park & the removal of them will be part of history" (Fears, 2017, n.p.).

Then, @AltUSNatParkService, a new account, appeared, which used the Park Service logo and identified itself as the “#Resistance team against #AltFacts #FauxNews #FauxScience ... Run by non-gov individuals” (@AltUSNaParkService 2017). As of February 27, 2017, this Twitter account had more than 84,000 followers.

The Park Service account set off resistance that spread to other agencies. Soon there were more than a dozen alt-agency Twitter accounts, all posting a combination of climate science facts and taunts at Trump. To wit, the AltUSDA account, which has more than 250,000 followers, claims to be “Resisting the censorship of facts and science. Truth wins in the end” (@AltUSDA 2017). The alternative EPA has even more fans, with more than 376,000 followers (@altEPA 2017).

There are many other resistance and advocacy projects in the works, but two actions are important to mention here. The first is 314action.org, which has as a main objective to elect scientists to public office (314Action n.d.). Secondly, Senator Tammy Baldwin and a group of several dozen Democratic senators proposed the “Scientific Integrity Act” (S.338), the goal of which is to protect scientists from political interference (Baldwin, 2017). The response to the Trump Administration’s stance toward science has touched a nerve with the American (and even global) public as well as that of the usually apolitical science community. It is a resistance movement that is large and fascinating to follow. The information here is only a brief snapshot; the movement bears watching and analyzing as initial activities play out.

## Discussion

### Synopsis

The Trump Administration’s recent ‘gag orders’ on government scientists and research have resulted in the public and media questioning the validity of ‘the right to know’ more so than any other recent administration. This is no small issue. Fortunately, the pervasive outcry against this behavior is proof of today’s much greater public consciousness of and heightened concern about this abuse of power. This is evident from the sustained jeremiad we see in voluminous commentary in the social media, published remarks from

scientific foundations and professional associations, and new efforts in Congress to bring attention to the gravity of this social problem.

Though not explicitly declared in our constitution, common law shows that the public has the right to know of governmental activity unless there is a clear and imminent threat to the national security. The government is accountable to the electorate, and only an informed public can evaluate the performance of its elected representatives. As Lyndon Johnson observed, no one, not even the president, should be able to secrete “decisions which can be revealed without injury to the public interest,” (Johnson, 1966, n.p.). Perhaps the reverse intent should be included in any proviso: ...nor should any decisions or data be concealed from the public whose censorship could cause harm to the public interest or whose dissemination could prevent harm to the people. Democracy requires the people’s belief in the legitimacy of the government and the people’s participation in the processes (Gonzalez & Tyler 2008). Part of the nation’s lack of trust in government is the history of executive-branch censorship. Our findings are interrelated in that: (a) trust in government is positively associated with satisfaction with the media because the public feels informed about the accomplishments and/or malfeasance; (b) media favorability is negatively associated with the number of FOIA lawsuits filed because when the media cannot get information from the government, it cannot write about it authoritatively, and so, must file suits to obtain the data; and (c) as trust in government decreases, the number of FOIA lawsuit filings increase.

Perhaps the most profound finding of this study is that a greater degree of trust in government is correlated with more voters actually casting ballots at the polls. Among 35 developed democracies around the world, the United States ranks 31st in voter turnout (<54%), a reflection of the public’s perception that our votes do not count for much (DeSilver, 2016; Ghose, 2012). As a people, we do not trust our elected officials or institutions. Our government seems to do what it wants to do, and we have no control over it. In combination with the other findings, this offers some optimism for the prospect of uniting the public and press in grass-roots efforts to persuade Congress and the courts to legally hold the executive branch accountable.

*Walker v. Cheney* (2002) brings to light one of the most serious drawbacks of FOIA law as it stands today—a lack of an effective impediment to government suppression of scientific

information. What kind of penalty would serve as enough of a deterrent to the widespread lack of transparency, violations of FOIA law, and violations of the First Amendment perpetrated by high-level public officials? *Walker v. Cheney* also challenges us to determine to whom the executive branch is legally accountable. Who has standing to sue a president or vice president? Can a harmed segment of the population sue the administration? Scientists and the public are mounting visible resistance but have little power to effect any change. Baldwin's congressional bill, while ingenuously advanced, will in all likelihood not make it far in the Republican-controlled House and Senate. What is left, then, is to rely on the press and public to challenge the executive power committing scientific information censorship. The catch-22 is that the constitutionally imposed role of the press cannot be fulfilled when government suppresses the information necessary to do the job—when the government filters science—because we don't know what we don't know.

#### Limitations and Avenues of Further Exploration

The use of secondary data always presents limitations on research. It often circumscribes the types of hypotheses and research questions that can be investigated, the number and type of independent variables available for analysis, and the actual analytical processes that can be employed. Another limitation is its correlational nature. We are sometimes able to observe some effects that, on their face, appear to be causal, but in this particular study, we have no way to determine which comes first, the attitude or the behavior. Therefore, we must be aware that there are, most likely, third variables that might contribute to these effects. Using original data, the relationship between trust in government, FOIA filings, and media approval should be investigated. FOIA litigation may be a moderator or mediator in the relationship between trust in government and perceptions of the media, but this cannot be determined using secondary data, as currently available. This could assist in constructing solutions to this problem. In addition, there exists no measure of opinion on executive power or government censorship. Wide-ranging measures, such as approval ratings and trust in government, amalgamate multiple causes or issues. Collecting an independent research sample with questions specific to this issue would be a desirable undertaking, providing quantitative evidence of public opinion on this matter.

One More Lesson: What is at Stake if We Do Nothing?

Perhaps the most egregious instance the executive power to censor scientific research was Ronald Reagan's refusal to inform the public about the AIDS epidemic. Reagan appeared to value transparency in his Executive Order 12356 (1982), saying to federal employees: "In no case shall information be classified in order to conceal violations of law, inefficiency, or administrative error; to prevent embarrassment to a person, organization, or agency; to restrain competition; or to prevent or delay the release of information that does not require protection in the interest of national security" (Fisher, 1990, p. 90).

However, Reagan's own legal directive was not sufficient to prevent him from delaying research into AIDS. The first cases of AIDS in the U.S. were diagnosed in 1981, Reagan's first year as president. With no treatment available, the medical community began promoting Harm Reduction (HR) policies, such as needle-and-syringe exchange programs (NEPs), protocols distasteful to religious conservatives, who believed NEPs would encourage drug use and homosexual behavior. In a state of denial of the severity of the epidemic, and in a cultural climate of victim blaming advanced by the Religious Right, who had supported Reagan in his successful bid for the presidency, Reagan prohibited use of the words "harm reduction" in any federal programs, literature, or grant applications. Congress banned the use of government money for NEPs and dissuaded drug users from entering public facilities for HIV testing and addiction treatment (Drucker, 2012). By failing to help scientists find a cure and disseminate the truth about how AIDS and HIV could be avoided, Reagan allowed 30,000 uninformed Americans to contract it by 1987 (Kalichman, 2009). How many people died as a result of Reagan's censorship? Reagan's AIDS policies persisted until 2010, when Obama revoked the ban on government funding of NEPs. Unfortunately, without explanation, by 2011, the ban was back in force.

Conclusion

Judge Greene from *L.S. J. U. v. Sullivan* laments that the invitation to government censorship in *Rust* "is bound to have increasingly wide negative effects on a free society, as the legality of censorship accompanying federal monies becomes more common and, thus, more deeply ingrained in the fabric of government and society" (*L. S. J. U. v. Sullivan*, 1991).

Greene's decision in *L.S. J. U. v. Sullivan* is one bound by the *Rust* precedent, but it restrains *Rust's* negative impact as decisively and completely as the law currently permits.

If the government has the deep pockets to delay and fight lawsuits, and there is no penalty great enough to prevent executive-branch suppression of information bearing on the public interest, there can be no satisfactory remedy. In an age of increasing power seated in the presidency, and growing judicial deference to the executive branch [*Walker* was dismissed when the court decided the GAO comptroller general did not have standing to sue the vice president (Halstead, 2003).], legislators must find the best way to construct a powerful and persuasive addendum to FOIA law, with teeth, to protect the people from their leaders' manipulation of scientific data (Rudenstine, 2016). If we continue to accept behavior like that of EPA director Scott Pruitt's total disrespect for the FIOA law, we will never achieve the kind of governmental transparency that we Americans want, need, and deserve. Not one more American life should be jeopardized by a president's wallet or bias.

James Madison said, "These gentlemen [opponents of the Constitution] must here be reminded of their error. They must be told that the ultimate authority, wherever the derivative may be found, resides in the people alone," (The Federalist 1788, No. 46).

#### Note

<sup>1</sup> Government websites offer different sets of data regarding the number of annual FOIA requests. The Department of Justice site reports a total of 769,903 FOIA requests for the year 2015 (United States Department of Justice 2016). The FOIA site (FOIA Project, 2017a) provides total annual statistics on its home page, but only for the time period between 2010 through 2015. Its report for total requests for 2015 claims the number 713,168, a difference between the two sites of almost 57,000 (13.6% variance).

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