

NO POLITICAL ENEMIES ACT

The Danger of Increasing Attacks on Free Speech and Political Participation

No President – Democrat or Republican – should have the power to punish people or organizations on the basis of their constitutionally protected speech, beliefs, viewpoints, or political participation. The law is supposed to protect all Americans from being targeted by their government, but it has become increasingly clear that the norms we have relied on to uphold the rule of law are insufficient in the face of Donald Trump's relentless weaponization of the federal government against his perceived enemies. The NOPE Act would provide individuals and organizations who are the victims of politically-motivated harassment and prosecution with the tools they need to fight back.

The No Political Enemies Act's key provisions include:

- **Clear Statement of Congressional Policy:** Would enact a clear statutory declaration that no federal executive branch official may initiate or direct investigative, regulatory, or enforcement actions against Americans to suppress or burden constitutionally protected speech or association (i.e., "politically motivated" targeting).
- **Statutory Defense in Political Targeting Cases:** Would create an affirmative defense in criminal prosecutions or civil enforcement actions. If a defendant presents substantial evidence that protected speech or association was a motivating factor, the burden shifts to the government to prove that legitimate, non-protected grounds justified the action. As part of this inquiry, the court may grant expedited discovery into government motivations. This provides a tool for those wrongly targeted to get meaningful access to evidence, corrects the imbalance of proof, and allows courts to quickly dismiss abusive actions.
- **Narrow Statutory Bivens Remedy to Deter Targeted Political Retaliation:** Would establish a cause of action allowing individuals to sue federal officials for damages when their First Amendment rights are violated due to politically motivated targeting. The bill would immunize officials who demonstrate the target's speech was not constitutionally protected, but end existing immunities for federal employees from lawsuits in their personal capacity.
- **Attorney Fee-shifting to Deter Meritless Politically Motivated Enforcement:** Would require the U.S. government to pay reasonable attorney's fees and costs to individuals and organizations who prevail in criminal prosecutions or civil enforcement actions if they can demonstrate the government's action was substantially motivated by a desire to suppress their constitutionally protected speech or association.
- **Prohibition on Use of Funds for Politically Motivated Targeting:** Would prohibit the use of federal funds for any investigatory, regulatory, or enforcement action initiated or pursued to suppress protected speech. Violations would trigger the Anti-Deficiency Act, creating administrative and potential criminal liability, and allow private parties to seek to prevent the use of such funds.