

November 2, 2021

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

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

The Honorable Madeleine Dean
Ranking Member
U.S. House Committee on the Judiciary

The Honorable Chuck Grassley
Ranking Member
U.S. Senate Committee on the Judiciary

RE: Support for the Foreign Extortion Prevention Act

Dear Chairman Nadler, Chairman Durbin, Ranking Member Dean, and Ranking Member Grassley,

As organizations and individuals who work to promote accountability in government and combat the abuse of power in the public and private sectors, we write in support of the Foreign Extortion Prevention Act (“FEPA”). From our collective research and experience working and living around the world, we believe this short, simple, and commonsense measure would bring U.S. foreign bribery law into the 21st century by aligning it with contemporary legal frameworks used across the world, would equip the Department of Justice (DOJ) with a powerful new tool it needs to combat corruption, and would provide to American businesses protections that have become essential in today’s global business environment.

By permitting a small group of well-connected people to play by a different set of rules at the expense of the rest of us, bribery undermines public health and safety, ignores environmental standards and national security risks, and diverts scarce taxpayer money to wasteful projects. Writ large, such corruption sows the seeds of economic and social unrest, increases the cost of doing business, and makes it much harder for small and medium enterprises to do business abroad.

Since its adoption in 1977, the Foreign Corrupt Practices Act (“FCPA”)¹ has served as a model law for regulating the “supply side” of foreign bribery by prohibiting U.S. companies and individuals from offering or paying bribes to foreign officials in furtherance of a business deal. Long the standard-bearer for regulating corrupt business practices, the FCPA has helped build a fairer global economic playing field.

The FCPA also gave foreign officials greater opportunity to make decisions based on what’s good for the citizens of their countries, not simply on what’s in their own self-interest. Unfortunately, however, foreign officials in corrupt regimes are increasingly demanding bribes from honest companies, and honest companies are increasingly faced with competition from foreign companies, including state-owned enterprises in such countries.² Perhaps most alarming, a survey by the Organization for Economic Cooperation and Development (OECD) found that this corruption is

¹ 15 U.S.C. §§ 78dd-1, et seq.

² See Tom Firestone & Maria Piontkovska, “Two to Tango: Attacking the Demand Side of Corruption,” *The American Interest*, Dec. 17, 2018, https://www.the-american-interest.com/2018/12/17/two-to-tango-attacking-the-demand-side-of-bribery/#_ftnref10.

rarely punished, as foreign officials who demanded or received bribes were criminally sanctioned in only 20 percent of surveyed schemes.³

The United Kingdom, Germany, France, and many, many other significant economic players have passed laws that criminalize both the “supply” and the equally pernicious “demand” side of foreign bribery.⁴ The importance of this two-directional legal framework has been reinforced by the OECD, which noted recently:

To 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.⁵

U.S. law, however, only criminalizes the first half of this bribery equation. This incomplete legal framework forces American businesses to compete on an uneven playing field in the global economy and hamstring U.S. law enforcement’s ability to protect U.S. interests beyond our borders.

Understanding the consequences of this “incomplete justice,” the DOJ has done what it can to fill the gap. When faced with prosecuting demand-side bribes, it has cobbled together elements of other, imprecise federal crimes such as the Travel Act, Sherman Act, and mail, wire, and financial institution fraud statutes.⁶ It has also attempted to read the FCPA itself broadly—an effort recently rejected by the U.S. Court of Appeals for the Second Circuit.⁷ It’s now abundantly clear that Congress, and Congress alone, is capable of giving U.S. law enforcement the tools they need.

FEPA would fill the gap by expanding the current U.S. federal bribery and gratuity statute⁸ to cover a foreign official or agent thereof who “corruptly demands, seeks, receives, accepts, or agrees to receive or accept” a bribe. This language, short and simple, would build upon the critical foundation established by the FCPA and provide another means of combating the harms to society and business caused by corruption.

Finally, reflecting the relationship between corruption, the rule of law, and economic stability, FEPA commits the proceeds of demand-side bribery sanctions to existing DOJ programs that will facilitate its effective enforcement (via the Office of International Affairs) and help counteract the emergence

³ See OECD, “Foreign Bribery Enforcement: What Happens to the Public Officials on the Receiving End?” Dec. 11, 2018, www.oecd.org/corruption/foreign-bribery-enforcement-what-happens-to-the-public-officials-on-the-receiving-end.htm. Notably, the report’s second main finding was that “the information flow between demand-side and supply-side enforcement authorities is often slow.”

⁴ Other countries that have criminalized demand-side bribery include Malaysia, Albania, Armenia, Bosnia and Herzegovina, Bulgaria, Croatia, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Macedonia, Moldova, Montenegro, Romania, Russia, Serbia, Slovenia, and Ukraine. See, e.g., *id.*

⁵ OECD, “Foreign Bribery Enforcement: What Happens to the Public Officials on the Receiving End?” 3, www.oecd.org/corruption/foreign-bribery-enforcement-what-happens-to-the-public-officials-on-the-receiving-end.htm.

⁶ 18 U.S.C. § 1952, 15 U.S.C. § 1, 18 U.S.C. § 1341, 18 U.S.C. § 1343, and 18 U.S.C. § 1344, respectively.

⁷ See *U.S. v. Hoskins*, 902 F.3d 69 (2d Cir. 2018).

⁸ 18 U.S.C. § 201.

of corrupt foreign officials (via the Office of Overseas Prosecutorial Development, Assistance, and Training, and the International Criminal Investigative Training Assistance Program).⁹

We applaud you for your leadership on FEPA and look forward to working with you to make this bill a reality. For any questions or additional information, please contact Scott Greytak, Director of Advocacy for Transparency International's U.S. office, at sgreytak@transparency.org.

Sincerely,

Organizations

Accountability Lab

Africa Faith and Justice Network

Anti-Corruption Data Collective

Citizens for Responsibility and Ethics in Washington

Coalition for Integrity

EG Justice

Freedom House

Global Financial Integrity

Greenpeace USA

Integrity Initiatives International

International Coalition Against Illicit Economies (ICAIE)

Oxfam America

Shadow World Investigations

The Financial Accountability and Corporate Transparency (FACT) Coalition

The Free Russia Foundation

The ONE Campaign

The Sentry

Transparency International – U.S. Office

UNISHKA Research Service

Visual Teaching Technologies, LLC

Prominent Individuals

Lieutenant Colonel (Ret.) Jodi Vittori, PhD, Shafafiyat Counter-Corruption Task Force (2011-2012); Global Politics and Security Co-Chair of Georgetown University's School of Foreign Service

Louise Shelley, Director, Terrorism, Transnational Crime and Corruption Center

Nate Sibley, Research Fellow, Kleptocracy Initiative, Hudson Institute

⁹ The U.S. State Department's Bureau of International Narcotics and Law Enforcement Affairs has explained that fighting corruption "promotes stability, the rule of law, human rights, and democracy," and "enhances economic growth in foreign markets, and levels the playing field for American businesses". U.S. Department of State, Bureau of International Narcotics and Law Enforcement Affairs "Anticorruption Fact Sheet," Mar. 22, 2019, <https://www.state.gov/anticorruption/>. See also Freedom House, "Democracy is Good for Business," Aug. 3, 2015, <https://freedomhouse.org/blog/democracy-good-business> ("stable, transparent governments built on respect for human rights and the rule of law tend to foster environments that are conducive to the establishment and unfettered operation of private enterprises"); Transparency International, "The Impact of Corruption on Growth and Inequality," Mar. 15, 2014, https://www.transparency.org/files/content/corruptionqas/Impact_of_corruption_on_growth_and_inequality_2014.pdf (identifying how corruption negatively impacts investment, taxation, public expenditures, and human development).

Shaazka Beyerle, Author, *Curtailling Corruption: People Power for Accountability and Justice*

cc: Members of the Congressional Caucus against Foreign Corruption and Kleptocracy