

## Civil Society Groups Endorse the OLC SUNLIGHT Act

September 27, 2019

Dear Representatives,

The undersigned groups, representing views from across the political spectrum and concerned about the prevalence of secret law relied upon by the executive branch, urge you to co-sponsor the OLC SUNLIGHT Act, introduced by Representatives Matt Cartwright, Zoe Lofgren, and Mike Quigley.

The Office of Legal Counsel (OLC) claims that its “core function” is providing “controlling advice to Executive Branch officials on questions of law that are centrally important to the functioning of the Federal Government.”<sup>1</sup> This advice, memorialized in legal opinions, “may effectively be the final word on the controlling law,” yet these opinions are routinely withheld from both Congress and the public.

Congress’s Constitutionally mandated legislative and oversight roles are threatened if members are not given the opportunity to examine how the laws they author have been implemented by the executive branch, and the public’s basic human rights are threatened by the existence of a large corpus of secret law. The OLC SUNLIGHT Act would provide access to OLC opinions, with appropriate redactions, and significantly cut back the danger that is secret law.

Known OLC opinions address a wide range of issues. OLC has issued opinions that bind the executive branch concluding:

- who may serve as a senior government official;
- that a United States citizen may be targeted by a drone strike;
- that the president may sign legislation into law using an autopen;
- that executive branch agencies need not respond to requests for information from members of the Minority party in Congress; and
- that presidential advisors cannot be compelled to testify before Congress.

These opinions are often the subject of intense, national debate, for instance those that concluded “enhanced interrogation” does not constitute torture. Some OLC opinions have served to conceal illegal government activity, such as one opinion that authorized domestic surveillance in violation of the Foreign Intelligence Surveillance Act.

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<sup>1</sup> <https://www.justice.gov/sites/default/files/olc/legacy/2010/08/26/olc-legal-advice-opinions.pdf>

The status quo is unacceptable. Today, neither Congress nor the public knows the number of OLC opinions currently in effect, much less their legal conclusions. Relying on the Department of Justice to determine which opinions are released has never been a workable system. Recognizing the profound influence these opinions have on federal law, the undersigned groups have fought for decades to increase transparency around them.

The OLC SUNLIGHT Act does not attempt to resolve the policy issues at stake in OLC opinions. Instead, it protects a foundational principle in our democracy: Congress and the public's right to know the laws of the land.

We urge you to support the effort against secret law by co-sponsoring the OLC SUNLIGHT Act.

Sincerely,  
American Civil Liberties Union  
Brennan Center for Justice  
Campaign for Accountability  
Campaign for Liberty  
Cause of Action Institute  
Citizens For Responsibility and Ethics in Washington  
Clean Elections Texas  
Coalition to Preserve, Protect & Defend  
Common Cause  
Demand Progress  
Electronic Frontier Foundation  
Government Information Watch  
Lincoln Network  
National LGBTQ Task Force Action Fund  
National Security Archive  
National Security Counselors  
Project On Government Oversight  
Protect Democracy  
Public Citizen  
R Street Institute