

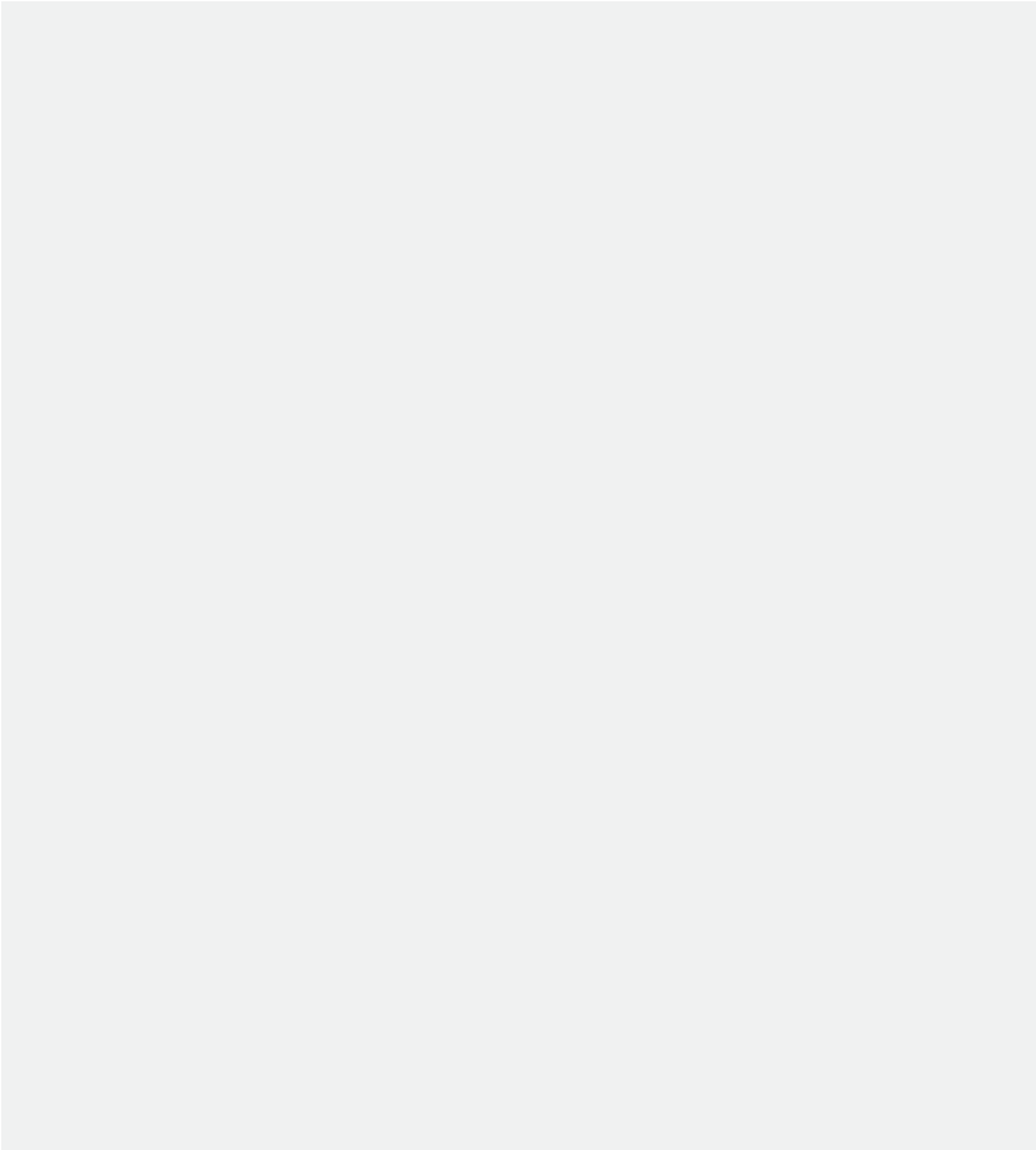
Report



Red Lines Around a Free and Fair Polish Election

Josh Rudolph
Anna Wójcik
Ayleen Cameron

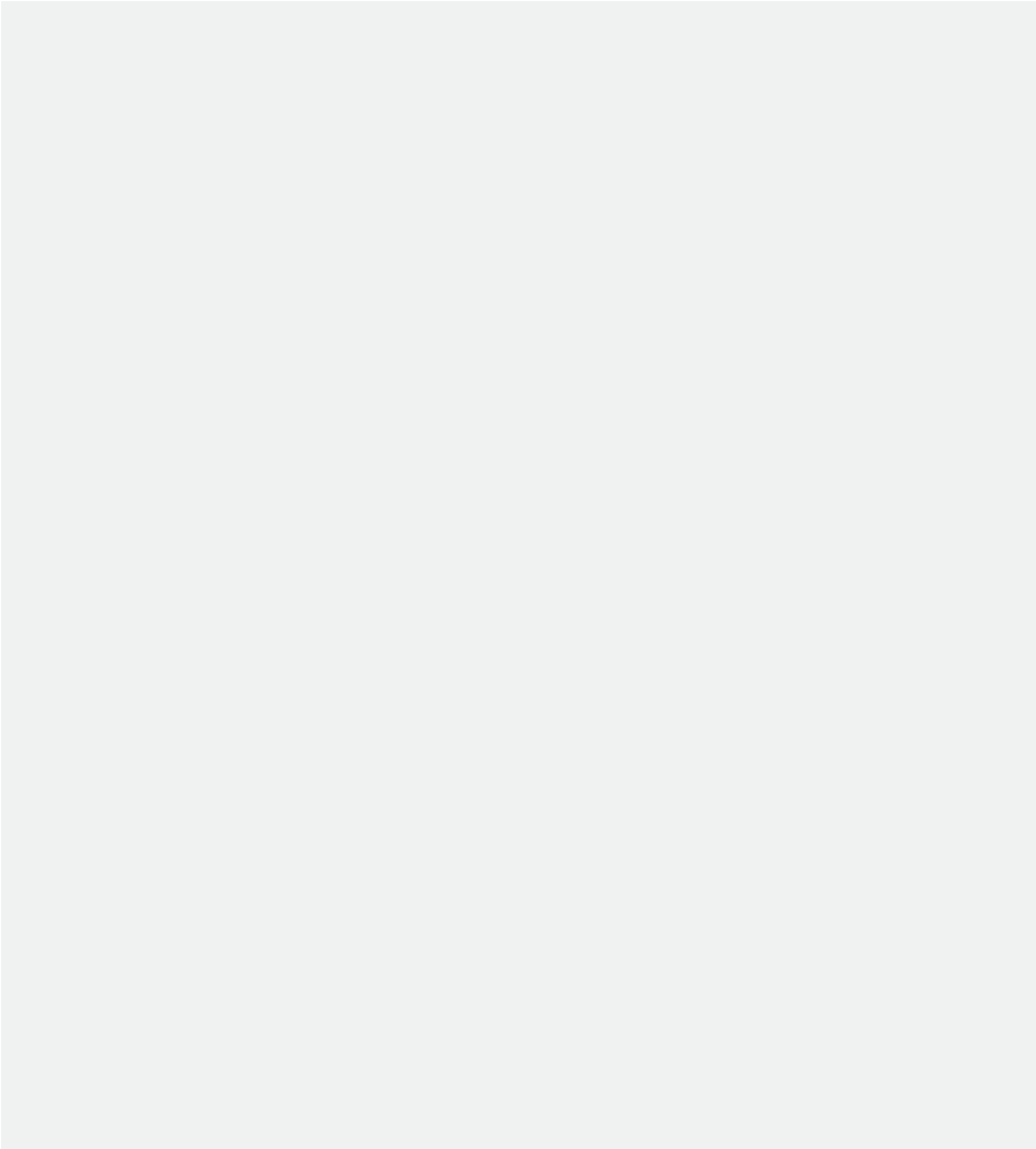
September, 2023



Red Lines Around a Free and Fair Polish Election

Table of Contents

| | |
|-----------------------------------------------------------|-----------|
| Executive Summary | 05 |
| Introduction | 07 |
| 1. Stop Corrupting State Firms for Campaigns | 09 |
| 2. Impartially Regulate Media Outlets | 11 |
| 3. Adhere to EU Rule-of-Law Agreements | 12 |
| 4. Ensure Independent Rulings on Elections | 13 |
| Conclusion | 15 |



Executive Summary

The October 15, 2023 Polish parliamentary election will not be fair. The country's last fair election was in 2015, when the ruling Law and Justice Party (PiS) came to power and promptly set about undermining constitutional governance. Since then, the weakness of Poland's rule-of-law system has enabled PiS to amend electoral law, reshape the media environment, exploit state-owned companies and other resources—including public funds—and engage in other [autocratic subversions](#) to tilt the playing field in Polish elections in favor of the ruling regime.

However, the degree of unfairness in this election will hinge on actions taken by Polish authorities. The authorities should:

- o stop diverting state resources into media enterprises and political messaging campaigns meant to support PiS candidates,
- o commit to renewing the licenses of independent media outlets such as TVN,
- o stop using arbitrary fines to harass and weaken independent media outlets,
- o stop using the system for disciplining judges as a weapon against those who do not display loyalty to the PiS regime,
- o implement judgments of European tribunals, and
- o ensure that rulings on the integrity of the election come from independent and impartial bodies.

While the US government has struck the right tone in recent values-based remarks about the importance of electoral fairness, the message has not broken through a policy environment that is crowded on two levels. Most importantly, many experts and officials in Warsaw believe that the United States is reluctant to pressure its strongest ally in supporting Ukraine in its war against Russia—the Polish government—on matters of electoral fairness. But even if the United States is genuinely committed to pressing for electoral fairness in Poland, there are so many areas of democratic backsliding in the country that it is not clear which concrete threats are priorities for the United States.

At every available opportunity, Poland's allies should publicly reiterate the importance of respecting shared democratic values by holding fair elections. Privately, diplomats should warn Warsaw that crossing red lines around the four most consequential risks to the integrity of the upcoming Polish election would trigger unified public rebukes from NATO allies.

Introduction

It is already safe to assume that the October 15 parliamentary election will be unfair. [Official international election observers](#) and the expert community find that 2015 was the last time Poland administered a fair election. Since then, both Polish national elections (in 2019 and 2020) were “free but not fair”, meaning that voters could cast ballots for candidates of their choice, but that the candidates were competing on a playing field that was far from level. The ruling party’s [autocratic playbook](#) featured state control over public media, pressure on private media companies, corruption in campaign finance, politicization of electoral administration, and other unconstitutional tactics of party takeover.

However, the degree of unfairness and the risks to the freedom of the 2023 election will depend on actions taken by Polish government authorities between now and any transition of power. Given the close relationship between the United States and Poland, as well as the firm anchor of Poland’s post-Cold War integration into Euro-Atlantic institutions, the US government is in a strong position to call attention to risks that endanger the integrity of Polish elections.

In recent weeks, senior US officials have begun speaking more openly about the importance of electoral fairness. When a Polish journalist asked whether Poland’s strategic position had become so important since the outbreak of Russia’s war against Ukraine that Washington would “no longer care about

the rule of law and democracy” in the country, US Ambassador Mark Brzezinski [pushed back](#):

No, that’s not true.... Polish-American relations are based on shared values such as equality, human rights, the rule of law, and democracy [and on] respecting these common values.... Only in this way will we be able to win the world clash between the forces of freedom and autocracy together. In practice, this means that both our countries respect ... fair elections. This requires a free media, support for the integrity of democratic institutions, maintaining full freedom of expression and avoiding any hate speech. Citizens’ right to elect their representatives must not be called into question and their trust in public institutions must not be undermined.

The ambassador’s statement strikes the right balance for public remarks: framing the issue at the high level of our shared values while also touching upon critical aspects of the democratic process. This is the way to make concerns concrete without counterproductively making Poles—who, given their history, are understandably sensitive to foreign meddling in their domestic governance—feel like Big Brother is poking them in the eye.

This message that electoral fairness is a top US diplomatic priority is not yet seen as credible in

Red Lines Around a Free and Fair Polish Election

Warsaw, however. Polish experts and officials we speak to believe that US diplomats may feel compelled to roll out generic talking points about shared values and fair elections when asked about democracy and the rule of law, but that they are not truly focused on threats to electoral fairness. All the US government really cares about, in their view, is helping Ukraine fight Russia.

Countering the perception of US inattention to democratic backsliding ahead of the October 15 parliamentary election calls for concerted diplomatic messaging. Brzezinski's recent public message should be repeated frequently, and accompanied by more concrete and pointed criticism when the Polish government crosses the line into corruption of the democratic process.

Past examples of effective US diplomatic responses to Poland's line-crossing include pushback on a 2021 law that would have [limited](#) foreign media ownership and a 2018 law that [criminalized](#) speech about Polish complicity in the Holocaust. A more recent example of similarly effective US pushback came in May 2023 following the passage of legislation known as "Lex Tusk", which authorizes the establishment of a commission to investigate Russian influence in Polish politics. After the State Department [warned](#) that Lex Tusk "could be used to block the candidacy of opposition politicians without due process", Poland amended the law to revoke the committee's power to bar people from public office.

Better yet would be to proactively identify latent risks rather than react only after harmful legislation is enacted. The United States and Poland's NATO allies should privately warn Warsaw that there are other red lines around the October 15 parliamentary election, and that crossing these, too, would trigger public diplomatic pressure on the Polish government. Poland's allies should identify specific red lines similar

to the respective recommendations at the end of each of the four sections of this report. If the private warning is effective, the Polish government should not be surprised when crossing such a line leads the State Department and other NATO allies to publicly rebuke the government for its democratic backsliding. These red lines would not preclude pressure around other issues if unexpected manifestations of democratic backsliding arise. But identifying four key foreseeable concerns would make the private warning clear, concrete, and credible.

Stop Exploiting State Companies and Election Legislation To Give the Ruling Party More Campaign Funding

1

In the 2019 parliamentary elections and the 2020 presidential election, official international election observers criticized Warsaw for manipulating Poland's weak legal-institutional electoral framework to provide the ruling party far more opportunities than the opposition to fund campaign activities. Observation missions criticized senior officials' practice of using state resources to crisscross the country making election promises to distribute public funds locally. Their pronouncements blended official statements with campaign stump speeches. In June 2020, last-minute changes to campaign finance laws allowed the incumbent president's committee to spend three times as much as his opponent's.

Moreover, state companies now controlled by bureaucrats loyal to the ruling party systematically fund pro-regime "NGOs", campaigns, and media. An example of such an "NGO" is the [Polish National Foundation](#), which is funded by state-owned Polish enterprises and promotes the policies of the ruling regime. In another example, a pro-government influencer, financed from the public fund for crime victims, set up a [foundation](#) to highlight criminality purportedly inspired by "LGBT ideology". Moreover, various projects and initiatives of the right-wing nationalist founder of radical right-wing radio station Radio Maryja, [Father Tadeusz Rydzyk](#), are lavishly supported by government ministries.

In terms of campaign funding, three-quarters of the 2019 campaign war chest for the prime minister [reportedly](#) came from 27 executives who work at state-owned entities. The opposition [claimed](#)—in allegations that PiS-controlled enforcement bodies have refused to investigate—that the ruling party planned these payments, diverting income from state companies to "an organized illegal pumping station" in an action that [constituted](#) "massive state company funding of their campaign". Similarly, in 2023, the CEOs of the largest state-controlled private companies, including the energy company Energa and PKN Orlen, are members of PiS.

PKN Orlen is a state-controlled Polish energy company and the largest company in central Europe. In late 2020, it [bought a media company](#) that controls 20 of Poland's 24 regional daily newspapers, 120 regional weeklies, and 500 websites. Fourteen of 15 regional editors-in-chief stepped down under pressure. Their replacements, drawn from the state network and right-wing media, have [shifted editorial lines](#) in favor of the ruling party ahead of the 2023 election. PKN Orlen's media empire includes its own advertising agency and the top Polish press distributor—assets that [give Orlen the power](#) to support other pro-regime media or punish independent media.

Most recently, in 2023, the Polish government allocated public funds for informational activities

Red Lines Around a Free and Fair Polish Election

as part of an unofficial electoral campaign that began before the president announced the election date. Prime Minister Mateusz Morawiecki allocated ten million PLN [from the budget reserve](#) for public service announcements regarding the increase of the PiS flagship child benefit in 2024 and 2.5 million PLN for promoting toll-free highways. Furthermore, government ministers, MPs and senators hand out [cardboard “checks”](#) with information about the allocation of funds from the Agricultural Development Agency to local women’s cooperatives. Justice Ministry officials have also [handed such gifts](#) to rural cooperatives.

Meanwhile, PiS has introduced a new mechanism for appropriating public funds to finance the regime’s reelection campaigns—a [referendum](#) that the government will hold alongside the October 15 parliamentary election. To mobilize its voters, the ruling party compiled a set of four politically charged questions that characterize opposition votes as statements in favor of illegal migration, undefended borders, state asset sales, and a higher retirement age. (For example, “Do you support the admission of thousands of illegal immigrants from the Middle East and Africa, in accordance with the forced relocation mechanism imposed by the European bureaucracy?”) Importantly, because Polish campaign finance law treats the referendum as separate from the election, the government may spend public money campaigning for it—a circumvention of election spending limits and a corrupt misuse of state funds. While the use of the referendum as a mechanism to mobilize voters is a common tactic of political parties, this particular combination of brazenly politicized language and one-sided exploitation of government funding makes it an autocratic effort straight out of the playbook of Hungary’s Viktor Orban.

While the independent Polish media and the opposition have covered these machinations, the

stories often fail to break through to the mainstream international media.

Poland’s allies should: Warn the Polish government that they are tracking these financial imbalances closely. Further, they should warn that they will view any abuse of the levers of power to the financial benefit of the ruling party in the fall campaign—exploitation of state companies, campaign finance laws, public spending, referendum campaigning—as legalized corruption.

Commit to Renewing Media Licenses and Imposing Fines Impartially

2

The government is putting political, regulatory, and legislative pressure on private and local media companies whose news outlets are impartial or critical of the ruling party. This affects in particular the privately-owned media company TVN Group, as the license for its primary channel, TVN, is set to expire in 2024. If the license is not renewed, TVN Group will have no effective appeal mechanism against the decision made by the National Broadcasting Council (KRRiT), which is packed with PiS loyalists. Postponing the licensing decisions until after the October election is a way for KRRiT to pressure the outlets into covering PiS favorably in the election campaign.

In addition to using licensing decisions to pressure private media outlets, KRRiT is increasingly fining independent media for reporting impartially on topics that may be politically inconvenient for PiS. In August, KRRiT fined privately-owned [Radio ZET](#) a record 476,000 PLN for reporting that Ukrainian President Zelenskyy transited through Poland on his way to Washington, DC without the knowledge of Polish authorities. In May, KRRiT fined [TOK FM](#) for criticizing the contents of a textbook commissioned by the Ministry of Education. In 2018, the State Department pressured Warsaw, and KRRiT stepped back from fining [TVN](#) a record 1.5 million PLN for reporting on a protest.

Poland's allies should: Urge the Polish authorities to ensure that any fines issued by KRRiT will be politically impartial, and publicly commit now to renewing the TVN and TOK FM licenses.

Adhere to EU Rule-of-Law Agreements

3

As soon as the ruling party took office in 2015, it set about dismantling constitutional governance through a [hostile takeover of Poland's courts](#). The [autocratic playbook](#) involved illegally packing the Constitutional Tribunal, which is tasked with constitutional review of legislation, and creating new judicial chambers in the Supreme Court populated with partisan loyalists. New legislation aimed to paralyze judicial bodies that had not yet come under party control, and weaponize those that had. In a case brought by the European Commission, the Court of Justice of the European Union found the new regime for disciplining judges incompatible with EU law, and the European Court of Human Rights found that it violates the European Convention on Human Rights by limiting the independence of the courts.

The Polish government should prioritize the resolution of the rule-of-law conflict with the EU. It should bring the judicial system into full compliance with EU and international law, notably by fully implementing regional court judgments. Poland should ensure that judges do not face politically motivated disciplinary actions for rulings that are not favorable for the ruling party. It must also provide judges affected by illegal disciplinary actions the opportunity to have their cases reviewed by an independent court. Ideally, the Constitutional Tribunal would go back to being an independent body with members appointed in accordance with legal standards and not be subjected to the political influence of ruling parties. In addition,

judges should be appointed through a peer-based process that is in keeping with international standards.

Poland's allies should: Urge the Polish government to institutionalize an independent and impartial process for disciplining judges and review current legislation for full compliance with EU law and international legal standards. Poland should adopt new legislation in instances of conflict.

Ensure That Rulings on Election Integrity Come From Independent and Impartial Bodies

4

Given the ruling party's influence over the responsible judicial and administrative bodies, Poland lacks a credible internal mechanism for adjudicating allegations of election improprieties. Complaints about voter exclusion, vote counting, results tabulation, or related matters are to be remedied by either the Extraordinary Chamber of the Supreme Court or the National Electoral Commission. Yet, European courts have repeatedly deemed the former to be lacking independence and in violation of EU law, while the latter—following a constitutional crisis that began when the ruling party came into power in late 2015—is now staffed by political appointees selected for partisan loyalty.

By comparison, judicial processes in the United States have played a valuable role in debunking disinformation following the 2020 presidential election and have upheld the election results. Ongoing cases related to alleged efforts to overturn the results of the 2020 election continue to narrow the space for disinformation by putting defendants in the position of having to justify—under oath—their public statements related to the cases. Without largely uncompromised and impartial institutions to adjudicate disagreements over election results, Poland's democratic process risks succumbing to the perception or the reality that it is rigged.

Poland's allies should: Urge the Polish government to promise that any rulings on the integrity of

the election come from impartial courts or other politically independent bodies. They should clarify that international organizations will regard any dubious judgments on the part of politically compromised governing bodies as not credible, and will rely heavily on the assessments of impartial civil society and external observers.

Conclusion

Poland's allies owe it to the Polish people to publicly reiterate that we must all live up to our shared democratic values, and that we do this through free and fair elections. Privately, the allies should warn Warsaw that the international community would feel compelled to publicly call out grave threats to the implementation of the people's democratic will. Allies should ask the Polish government to help them avoid applying pointed public diplomatic pressure by preventing misuse of state resources to fund pro-PiS political activities, renewing the licenses of private media, ending the practice of using disciplinary actions to punish impartial judges, and ensuring that independent and impartial bodies rule on questions of election integrity.

Disclaimer

The views expressed in GMF publications and commentary are the views of the author(s) alone.

As a nonpartisan and independent research institution, the German Marshall Fund of the United States is committed to research integrity and transparency.

About the Authors

Josh Rudolph is the senior fellow and head of malign finance and corruption at ASD at GMF.

Anna Wójcik is a fellow with GMF's Engaging Central Europe initiative.

Ayleen Cameron is an intern at ASD at GMF.

Cover photo credit: [Kaboompics](#) | [Pexels](#)

Alliance for Securing Democracy at GMF

The Alliance for Securing Democracy (ASD) at the German Marshall Fund of the United States (GMF) is a nonpartisan initiative that develops comprehensive strategies to deter, defend against, and raise the costs of autocratic efforts to undermine and interfere in democratic institutions. ASD has staff in Washington, DC, and Brussels, bringing together experts on disinformation, malign finance, emerging technologies, elections integrity, economic coercion, and cybersecurity, as well as Russia, China, and the Middle East, to collaborate across traditional silos and develop cross-cutting frameworks.

securingdemocracy.gmfus.org | gmpress@gmfus.org

Acknowledgements

This research was conducted with the support of the Transatlantic Democracy Working Group. The authors would like to thank Michał Baranowski, Cassandra Emmons, Marta Prochwicz-Jazowska, Olivia Monroe, Claire Rosenson, Josh Russell, David Salvo, Erika Schlager, Krystyna Sikora, and Laura Thornton for their invaluable expertise and feedback.

Ankara • Belgrade • Berlin • Brussels • Bucharest

Paris • Warsaw • Washington, DC

gmfus.org