

Spring 2013

# Back to the Bad Old Days: President Putin's Hold on Free Speech in the Russian Federation

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## Recommended Citation

Rebecca Favret, Comment, *Back to the Bad Old Days: President Putin's Hold on Free Speech in the Russian Federation*, 12 Rich. J. Global L. & Bus. 299 (2013).

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# COMMENT: BACK TO THE BAD OLD DAYS: PRESIDENT PUTIN'S HOLD ON FREE SPEECH IN THE RUSSIAN FEDERATION

*Rebecca Favret*

*"The KGB chief, their number one saint/  
Will escort protesters off to jail."<sup>1</sup>*

## EXECUTIVE SUMMARY

This paper addresses new laws promulgated in Russia that restrict freedom of speech. Each implicitly reflects the Kremlin's hostility toward political dissidence in the aftermath of serious protests following President Putin's reelection and elections to the legislature. Disturbed by the outcry, which took place in cities across Russia but also infiltrated the Internet, the Russian legislature passed strict laws censoring Internet speech, prohibiting behavior and speech deemed "extremist," and curbing the size and type of public gatherings.

The new legislation is examined through the lens of some of the Kremlin's most infamous and recent targets: namely, the Internet blacklist and the Pussy Riot scandal. It is critical to note that these instances are only a fraction of the free speech violations that are now legal in the Russian Federation. These incidents—and the potential for similar and more serious results under the new laws—are of grave importance. For many Western critics and Russian citizens, the laws confirm their worst fears about Putin's autocratic leanings: that with the stifling of free speech will come a complete unraveling of Russian democracy. The effect is a grim future for the former Soviet Union eerily reminiscent of the past.

## I. INTRODUCTION

It is a long-standing principle that freedom of speech is at the core of a functioning democracy. For purposes of democratic legitimacy, free speech is a necessity more critical than suffrage. A

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<sup>1</sup> Lyrics from a Pussy Riot song, referring to Russian President Vladimir Putin's hostile approach to political dissenters. In her closing statements immediately preceding her conviction, band member Nadezhda Tolokonnikova noted the prophetic nature of the lyrics. See Adam Taylor, *Here's What Russian Punk Band Pussy Riot Said at the Conclusion of Their Controversial Blasphemy Trial*, BUSINESS INSIDER (Aug. 10, 2012, 11:29 AM), <http://www.businessinsider.com/pussy-riot-trial-nadezhda-tolokonnikovas-closing-statement-2012-8#ixzz23RAu7eW7>.

speaker's freedom to express his or her viewpoint implicitly carries with it the right of potential audiences to hear and access that viewpoint. Access to information, in a political context or otherwise, is a crucial component of autonomy. Without it, decision-making is significantly hindered. Despite the existence of a popular vote, if voters are unable to independently make decisions because of a lack of information, democracy inevitably erodes.

The importance of free speech is the foundation for Western concerns over recent legislation in Russia curtailing the right to free expression. Amid contentions that he rigged the recent Duma (parliament) elections, President Putin has asserted even more political control by pushing numerous laws through the legislature that inhibit free speech. This paper focuses on three of them: the anti-extremism law, the Act for Information, and the amendments to the Law on Rallies. Each serves to clamp down on political dissidence in one form or another, either through personal actions, Internet speech, or activism and protests.

## II. RUSSIAN POLITICAL CULTURE UNDER PRESIDENT PUTIN

Vladimir Putin has held political prominence in Russia since the dawn of the twenty-first century.<sup>2</sup> The former KGB agent-turned Prime Minister is currently in his third six-year term as president.<sup>3</sup> But his control runs even deeper than the already constitutionally superior executive branch.<sup>4</sup> In 2003, he formed his own political party, United Russia, to serve as his proxy in the legislature, known as the Duma.<sup>5</sup> After the 2011 elections, members of the United Russia party comprised 70 percent of the seats in the legislature.<sup>6</sup> The results were

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<sup>2</sup> Then-Prime Minister Putin succeeded Boris Yeltsin as President of the Russian Federation in May 2000. He served two four-year terms as President and then stepped aside, assuming the role of Prime Minister, because the Russian Constitution prohibits three consecutive presidential terms. Dmitry Medvedev assumed the presidency, with the understanding that he would step down so Putin could run once Medvedev's term expired. See, e.g., Ellen Barry, *Putin Once More Moves to Assume Russia's Top Job*, N.Y. TIMES, Sept. 25, 2011, at A1.

<sup>3</sup> *World's Most Powerful People: Vladimir Putin*, FORBES, <http://www.forbes.com/profile/vladimir-putin/> (last visited Jan. 12, 2013).

<sup>4</sup> See Gordon L. Bowen, *Russian Legislative and Electoral Systems*, MARY BALDWIN COLLEGE, <http://www.mbc.edu/faculty/gbowen/duma.htm> (last visited Jan. 11, 2013).

<sup>5</sup> *Id.* Note that the United Russia Party was originally called One Russia. *Id.*

<sup>6</sup> Kathy Lally, *Vladimir Putin's United Russia Party Wins Regional Elections*, WASHINGTON POST, Oct. 15, 2012, [http://articles.washingtonpost.com/2012-10-15/world/35500413\\_1\\_regional-elections-election-results-political-technologies](http://articles.washingtonpost.com/2012-10-15/world/35500413_1_regional-elections-election-results-political-technologies). The result of the legislative elections was the subject of considerable protest through-

so overwhelming in part because, since 2004, when Putin and the Duma passed legislation prohibiting non-party members from seeking election, only candidates from approved parties have been permitted to run for election.<sup>7</sup> Additionally, amid allegations of fraud, only 25 percent of Russians turned out to vote in the 2011 elections with the majority abstaining in protest.<sup>8</sup>

In light of the allegedly corrupt electoral process, the correlation between freedom of expression and democracy has become tangible in Russia. While the Russian Constitution guarantees freedom of speech,<sup>9</sup> the government either directly or indirectly controls every national television network.<sup>10</sup> At least 19 journalists have been murdered after publicly opposing President Putin, and the half-hearted investigations into their deaths have yet to yield a conviction.<sup>11</sup> Well-known dissidents have been jailed on trumped-up charges.<sup>12</sup>

With his combination of intimidation tactics and ability to effectively handpick the nation's legislature, Putin is able to further control opposition to his leadership. Just in the months following the most recent legislative election, Putin has pushed through numerous laws that stifle free speech and the media in an effort to stamp out criticism.<sup>13</sup> Opponents of the President have been swiftly silenced—either through prosecution and imprisonment under the new laws<sup>14</sup> or

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out Russia, discussed *infra*. For a discussion of Putin's relationship with the United Russia Party in the legislature as "electoral authoritarianism," see Sean Roberts, *Dominant-Power Politics and 'Virtual' Hegemony: The Role of United Russia in the Putin Period* (2010) (Ph.D dissertation, University of Birmingham) (on file with University of Birmingham).

<sup>7</sup> Bowen, *supra* note 4.

<sup>8</sup> Lally, *supra* note 6.

<sup>9</sup> KONSTITUTSIYA ROSSHIKOI FEDERATSII [KONST. RF] [CONSTITUTION] art. 29 (Russ.), available at <http://www.constitution.ru/en/10003000-01.htm> ("Everyone shall have the right to freedom of thought and speech. The propaganda or agitation instigating social, racial, national, or religious hatred and strife shall not be allowed.")

<sup>10</sup> *Freedom in the World 2012: Russia*, FREEDOM HOUSE, <http://www.freedomhouse.org/report/freedom-world/2012/russia-0> (last visited Jan. 11, 2013).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> See, e.g., Amendments to Federal Law on Protecting Children from Information Harmful to Their Health and Development, FEDERAL'NYI ZAKON [FZ] [Federal Law] 2012, No. 139 (requiring that websites with information deemed harmful to children be blacklisted); Federal Law on Combating Extremist Activity, FEDERAL'NYI ZAKON [FZ] [Federal Law] 2002, No. 114, available at <http://www.legislationline.org/documents/id/4368>.

<sup>14</sup> See, e.g., FREE PUSSY RIOT, <http://freepussyriot.org/about> (last visited Jan. 2, 2013); see generally James Brooke, *Analysis: Political Winter Descends over Russia*, VOICE OF AMERICA, Oct. 23, 2012,

through extra-legal tactics, including the mysterious disappearances and blatant assassinations of vocal dissidents.<sup>15</sup> Silencing critics in Russia is nothing new,<sup>16</sup> but the government has seemingly renewed its crusade against opposition through legislation that stifles free speech.<sup>17</sup>

The government's uneasiness regarding political speech comes on the heels of a massive uprising following the 2012 election, which was tainted by allegations of fraud, and extended up through the eve of Putin's inauguration.<sup>18</sup> Protests raged in over 50 cities, marking the first widespread anti-Putin demonstration since he first took office in 2000.<sup>19</sup> In December, the For Fair Elections rally drew a crowd of 30,000, demanding that the Duma elections be recalled.<sup>20</sup> Virtually,

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political-winter-descends-on-russia/1531876.html ("President Putin has methodically reduced civic space in Russia by advocating new laws on treason, blasphemy, libel, Internet censorship and curbs on public protest.").

<sup>15</sup> See, e.g., *Journalists Killed in Russia*, COMMITTEE FOR THE PROTECTION OF JOURNALISTS, <http://cpj.org/killed/europe/russia/> (last visited Jan. 10, 2013). In 2010, the Committee for the Protection of Journalists listed Russia as the fourth-most dangerous nation in the world for journalists. *The Five Most Dangerous Countries for Journalists*, CHRISTIAN SCI. MONITOR, Nov. 8, 2012, <http://www.csmonitor.com/World/Global-Issues/2010/1108/The-five-most-dangerous-countries-for-journalists/Russia>; *Two More Critics of Vladimir Putin Take Bullets in the Head*, WASHINGTON POST, Jan. 20, 2009 (The aptly titled article discusses the assassinations of a human rights lawyer, Stanislav Markelov, and an opposition journalist, Anastasia Baburova, days after they held a press conference condemning Putin's leadership.).

<sup>16</sup> See generally *Partial Justice: An Inquiry Into the Deaths of Journalists in Russia, 1993-2009* (John Crowfoot, ed., 2009), available at [http://www.ifex.org/russia/2009/06/23/ifj\\_partial\\_justice\\_report.pdf](http://www.ifex.org/russia/2009/06/23/ifj_partial_justice_report.pdf) (reporting that over 300 journalists were killed in Russia between 1993 and 2009, either during the performance of professional duties such as being caught in the crossfire while reporting during war times, or assassinated for political reasons, or were reported missing and never found).

<sup>17</sup> See, e.g., Amendments to Federal Law on Protecting Children from Information Harmful to Their Health and Development, *supra* note 13 (requiring that websites with information deemed harmful to children be blacklisted); Federal Law on Combating Extremist Activity of the Russian Federation, *supra* note 13.

<sup>18</sup> Zack Whittaker, *Russia's Internet Blacklist Looms in Freedom Crackdown*, CNET NEWS (July 6, 2012), [http://news.cnet.com/8301-13578\\_3-57466592-38/russias-internet-blacklist-looms-in-freedom-crackdown/](http://news.cnet.com/8301-13578_3-57466592-38/russias-internet-blacklist-looms-in-freedom-crackdown/).

<sup>19</sup> *Id.* Over 7,000 people participated in an election protest in St. Petersburg, and 4,000 rallied in Novosibirsk, despite the temperature being -20 degrees Celsius. Miriam Elder, *Russians Come Out in Force To Protest Against Alleged Electoral Fraud*, OBSERVER, Dec. 10, 2011, <http://www.guardian.co.uk/world/2011/dec/10/russia-protests-election-vladimir-putin>.

<sup>20</sup> See generally *Russia's Opposition Protests Chronology*, RUSSIAN LEGAL INFORMATION AGENCY, Sept. 14, 2012, <http://rapsinews.com/publications/20120914/2646>

thousands of Russians protested Putin's third presidential election, creating blogs and websites demanding that votes be recounted and alleging that the election was rigged.<sup>21</sup> Prominent blogger Alexei Navalny, who has since been jailed,<sup>22</sup> took his anti-corruption crusade to new levels after Putin's re-election when he launched the Good Machine of Truth (GMT).<sup>23</sup> The project condemns Putin's United Russia political party and aims to educate Russians about government corruption.<sup>24</sup> After opening the site, Navalny became the target of an implausible embezzlement investigation that most view as an attempt to silence his infamous criticism of Putin.<sup>25</sup>

Fully illustrating the context in which these new laws are being implemented is additional legislation, recently adopted, that reflects the Putin regime's anti-democratic principles. In November 2012, a law went into effect requiring all foreign non-commercial organizations and non-governmental organizations to register with the government as "foreign agents."<sup>26</sup> Registration subjects foreign agents to substantial surveillance and financial audits by the government.<sup>27</sup> Moreover, the Duma newly reversed legislation that had, just seven

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76534.html (including a chronology of the entire series of opposition protests from December 2011 to September 2012).

<sup>21</sup> Whittaker, *supra* note 18.

<sup>22</sup> Navalny was arrested in 2012 on what most believe to be fabricated embezzlement charges. This is the third allegation of embezzlement leveled against Navalny; all three investigations came in the wake of a protest organized by Navalny or anti-government Internet campaign such as the Good Machine of Truth. See, e.g., Ellen Barry, *Russia Charges Anticorruption Activist in Plan To Steal Timber*, July 31, 2012, N.Y. TIMES, available at [http://www.nytimes.com/2012/08/01/world/europe/aleksei-navalny-charged-with-embezzlement.html?\\_r=0](http://www.nytimes.com/2012/08/01/world/europe/aleksei-navalny-charged-with-embezzlement.html?_r=0); Max Seddon, *Alexei Navalny, Russia Opposition Leader, Accused of Financial Corruption*, Dec. 14, 2012, HUFFINGTON POST, available at [http://www.huffingtonpost.com/2012/12/14/alexei-navalny-fraud\\_n\\_2300393.html](http://www.huffingtonpost.com/2012/12/14/alexei-navalny-fraud_n_2300393.html) (last visited Jan. 9, 2013).

<sup>23</sup> *Profile: Russian Blogger Alexei Navalny*, BBC NEWS, <http://www.bbc.co.uk/news/world-europe-16057045> (last visited Jan. 12, 2013).

<sup>24</sup> *Dobraya Mashina Pravdi (Good Machine of Truth)*, MASHINA.ORG (last visited Jan. 12, 2013) (translated by the author).

<sup>25</sup> Max Seddon, *Alexei Navalny, Russia Opposition Leader, Accused of Financial Corruption*, HUFFINGTON POST, Dec. 14, 2012, [http://www.huffingtonpost.com/2012/12/14/alexei-navalny-fraud\\_n\\_2300393.html](http://www.huffingtonpost.com/2012/12/14/alexei-navalny-fraud_n_2300393.html).

<sup>26</sup> Introducing Amendments to Certain Legislative Acts of the Russian Federation Regarding the Regulation of Activities of Non-Commercial Organizations Performing the Function of Foreign Agents. See also NCO Law Monitor: Russia, INFORMATION CENTER FOR NOT-FOR-PROFIT LAW, <http://www.icnl.org/research/monitor/russia.pdf> (last visited Dec. 19, 2012).

<sup>27</sup> INFORMATION CENTER FOR NOT-FOR-PROFIT LAW, *supra* note 26.

months prior, made defamation an administrative offense.<sup>28</sup> Now, defamation is back in the Criminal Code.<sup>29</sup> UN High Commissioner for Human Rights, Navi Pillay, said of the re-criminalization of defamation:

“There is a lot of concern that making defamation a criminal offense will stifle all criticism of Government authorities and limit the ability of individuals to address issues of transparency, corruption, and abuse of power. I urge the Government of the Russian Federation to avoid taking further steps backward to a more restrictive era, and to make strenuous efforts to limit the detrimental effects of the laws and amendments already passed over the last few weeks.”<sup>30</sup>

Anti-Western sentiment was further espoused in Putin’s September 2012 termination of Russia’s partnership with USAID, signaling the end of collaboration between the two nations in helping develop the Russian Federation in the post-Soviet era.<sup>31</sup> Most recently, an emphatic anti-Western enactment by the Duma sparked an international outrage when it formally outlawed U.S. adoptions of Russian orphans.<sup>32</sup>

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<sup>28</sup> *Russia’s New Laws Could Have Serious Negative Impact on Human Rights – U.N. Official*, U.N. NEWS CENTRE, July 18, 2012, <http://www.un.org/apps/news/story.asp?NewsID=42497#.ULeZCWA1Yb0> (“In just two months, we have seen a worrying shift in the legislative environment governing the enjoyment of freedoms of assembly, association, speech and information in the Russian Federation. [. . .] At least four new provisions have been made that will have a detrimental effect on human rights in this country.”).

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> David M. Herszenhorn, *With Aid Cutoff, Kremlin Recalibrates*, N.Y. TIMES, Sept. 22, 2012, [http://www.nytimes.com/2012/09/23/world/europe/as-kremlin-ends-us-aid-critics-see-bid-to-quell-dissent.html?\\_r=0](http://www.nytimes.com/2012/09/23/world/europe/as-kremlin-ends-us-aid-critics-see-bid-to-quell-dissent.html?_r=0).

<sup>32</sup> See On Sanctions for Individuals Violating Fundamental Human Rights and Freedoms of the Citizens of the Russian Federation, informally Dima Yakovlev Act, Dec. 26, 2012, 272-FZ (unofficially translated by RT.com); See, e.g., Madison Park, *Russia’s Lower House Approves Bill To Ban U.S. Adoption*, CNN, Dec. 27, 2012, <http://www.cnn.com/2012/12/21/world/europe/russia-us-adoption-ban/index.html>; *Duma Retaliates Against U.S. With Adoption Ban, NGO Restrictions, Blacklist*, RUSSIAN LEGAL INFORMATION AGENCY, Dec. 21, 2012 (explaining that the adoption ban was a retaliatory gesture by Russia after the United States signed the Magnitsky Act, imposing sanctions against Russians who have been involved in human rights violations).

### III. CURTAILING SPEECH

#### A. *Laws Against Extremism and the Pussy Riot Scandal*

A federal law “on combating extremist activity” was adopted in 2002 and broadly prohibits the dissemination of “extremist” information through personal activities, media, the Internet, or mass gatherings.<sup>33</sup> In addition to stirring up racial or religious discord, obstruction of justice, and promoting terrorism, the first activity on the list of prohibited “extremist” activities is “forcible change of the foundations of the constitutional system and violation of the integrity of the Russian Federation.”<sup>34</sup> This provision has the potential to be construed liberally enough to disallow all civil activism, critical language, or government protest—if the activity or language is not already prohibited by other new laws, as discussed in Parts B and C, *infra*.

A first casualty of the anti-extremism laws gained global notoriety in February 2012. Members of an anonymous, feminist punk rock band, Pussy Riot, staged a political protest during a Moscow church service.<sup>35</sup> The performance was an act of protest against President Putin’s increasingly authoritative rule and the growing role of the Russian Orthodox Church in the political regime.<sup>36</sup> It lasted forty-one seconds.<sup>37</sup> Despite its brevity, the unwelcome concert became the subject of a criminal investigation after a video of the song appeared on YouTube, amassing over 600,000 views in the first day.<sup>38</sup> The song’s opposition to President Putin (“Virgin Mary, Mother of God, put Putin away/ Put Putin away, put Putin away!”) was deemed an act of religious hatred by Kirill I, the Patriarch of the Russian Orthodox Church, and the women were charged under the law against extremism.<sup>39</sup>

The three artists, who are no longer anonymous but are known throughout the world: Maria Alyokhina, Yekaterina Samutsevich, and Nadezhda Tolokonnikova, were arrested on criminal charges of

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<sup>33</sup> Federal Law on Counteraction of Extremist Activities, July 25, 2002, No. 114-FZ (unofficially translated by the Council of Europe).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* The Church has seen increased influence over the federal government since the 1990s and is highly visible in Russian secular life. For a discussion, see Amy Liedy, *The Orthodox Church in Russian Politics*, WILSON CENTER KENNAN INSTITUTE, <http://www.wilsoncenter.org/publication/the-orthodox-church-and-russian-politics> (last visited Jan. 21, 2013).

<sup>37</sup> See Take Action for Pussy Riot, AMNESTY INTERNATIONAL, [http://takeaction.amnestyusa.org/c.60JCLQPAJiJUG/b.8465995/K.6DQD/Pussy\\_Riot\\_writeathon/siteapps/advocacy/ActionItem.aspxk](http://takeaction.amnestyusa.org/c.60JCLQPAJiJUG/b.8465995/K.6DQD/Pussy_Riot_writeathon/siteapps/advocacy/ActionItem.aspxk) (last visited Jan. 2, 2013).

<sup>38</sup> Free Pussy Riot, *supra* note 14.

<sup>39</sup> *Id.*



hooliganism.<sup>40</sup> Samutsevich's sentence was suspended when the Court learned that she had merely been outside of the church during the demonstration, but Alyokhina and Tolkonnikova were given two-year sentences in two of the most notoriously inhumane Siberian labor camps, hundreds of miles from their homes and children in Moscow.<sup>41</sup>

Concededly, Pussy Riot's actions were designed to incite political change, and their actions did violate the anti-extremism law.<sup>42</sup> Samutsevich did not attempt to hide the band's political aims, commenting to a reporter, "Our art is meant to make the entire world laugh at Putin, so that not a single self-respecting leader would agree to sit down at the same table with him."<sup>43</sup>

The issue, then, is not simply whether Pussy Riot violated the anti-extremism law in attempting to incite political change; they blatantly did. The contention instead posed by human rights activists is that the law does not clearly define extremism and, in effect, the law itself is a violation of human rights.<sup>44</sup> The Center for Information Analysis, a Russian nonprofit organization, monitors government misuses of counter-extremism legislation and has condemned the application of the statute to the Pussy Riot protest.<sup>45</sup> The law under which

<sup>40</sup> See, e.g., *id.*

<sup>41</sup> See, e.g., *id.* Their right to freedom of speech was not Pussy Riot's only constitutional guarantee violated. Leading up to their trial, the women were illegally placed under 24-hour video surveillance after the Pussy Riot scandal was labeled of "special importance" by the prosecution team. See also *Masha and Nadya To Serve Sentences in Russia's 'Harshes Prisons' in Perm and Mordovia*, FREE PUSSY RIOT (Oct. 24, 2012), <http://www.freepussyriot.org/news/masha-and-nadya-serve-sentences-russias-harshes-prisons-perm-and-mordovia> (Perm and Mordovia host multiple prison camps, most of which reportedly represent the Soviet-era gulag, or forced labor, system); *Maria Alekhina Transferred to Solitary Cell in Berezniki Prison Because She Received Threats of Physical Harm*, FREE PUSSY RIOT (Nov. 22, 2012), <http://www.freepussyriot.org/news/maria-alekhina-day-transferred-solitary-cell-berezniki-prison-because-she-received-threats-phys>.

<sup>42</sup> See Federal Law on Combating Extremism of the Russian Federation, No. 114-FZ, July 25, 2002 (unofficially translated by the Council of Europe).

<sup>43</sup> Anna Nemstova, *Pussy Riot's Yekaterina Samutsevich Speaks Out*, DAILY BEST, Dec. 2, 2012, <http://freepussyriot.org/articles>.

<sup>44</sup> See, e.g., Christopher Plummer, *Protests Condemn Pussy Riot Verdict, Call for Russia's Awakening*, HUMAN RIGHTS FIRST, Aug. 21, 2012, <http://www.humanrightsfirst.org/2012/08/21/protests-condemn-pussy-riot-verdict-call-for-russias-awakening/>; see generally *We Will Not Be Silent: Free Pussy Riot*, AMNESTY INTERNATIONAL, Sept. 18, 2012, <http://www.amnestyusa.org/get-involved/take-action-now>.

<sup>45</sup> SOVA: CENTER FOR INFORMATION AND ANALYSIS, <http://www.sova-center.ru/en/about-us/> (last visited Nov. 19, 2012); Alexander Verkhovsky, *Inappropriate Enforcement of Anti-Extremist Legislation in Russia in 2011*, SOVA: CENTER FOR INFORMATION AND ANALYSIS, Apr. 27, 2012, <http://www.sova-center.ru/en/misuse/>

Pussy Riot was convicted raises concerns about the ability of Russians to display any oppositional conduct.<sup>46</sup>

The anti-extremism statute is not restricted to Pussy Riot's punk performance or amateur criticism of Putin. The legislation has been instrumental in stamping out even official political speech of party opponents. Leading up to the 2007 and 2011 parliamentary election seasons, the legislation was instrumental in halting distribution of informational campaign materials.<sup>47</sup> Eventually, the concerns with the seized brochures and newspapers would be deemed "unfounded," in most cases under the anti-extremism statute, but not until voting had ended and their purpose had obviously and conveniently been nullified.<sup>48</sup> Similarly, commercials on behalf of the Just Russia party were removed from circulation after the election commission concluded that the commercials were "inciting social discord."<sup>49</sup>

### B. Internet Censorship in Russia

The government's efforts to combat extremism also have implications for Internet speech. In November 2012, the legislature enacted a new censorship law aimed at extremist web content.<sup>50</sup> The Act for Information authorizes government officials to blacklist websites displaying information deemed harmful to children.<sup>51</sup> Websites warrant-

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reports-analyses/2012/04/d24302/; Natalia Yudina, *Recommendations for the OSCE Dublin Conference on Internet Freedom*, SOVA: CENTER FOR INFORMATION AND ANALYSIS, JUNE 20, 2012, available at <http://www.sova-center.ru/en/misuse/reports-analyses/2012/06/d25708/> (identifying "interrelation of countermeasures to hate speech on the Internet and defense of freedom of expression on the Internet" as an area that the Institute deemed "especially problematic.").

<sup>46</sup> Note that Pussy Riot's performance would have also been outlawed under the amendments to the Law on Rallies, which imposes strict regulations on permits for public gatherings and outlaws numerous types of behavior during rallies, including wearing masks, which the members of Pussy Riot always sport to preserve their signature anonymity. See *Main Amendments to Laws on Rallies*, RUSSIAN LEGAL INFORMATION AGENCY, [http://rapsinews.com/legislation\\_mm/20120613/263437356.html](http://rapsinews.com/legislation_mm/20120613/263437356.html) (last visited Jan. 10, 2013).

<sup>47</sup> See generally SOVA: CENTER FOR INFORMATION AND ANALYSIS, <http://www.sova-center.ru/en/> (last visited Nov. 19, 2012); Alexander Verkhovsky, *supra* note 45.

<sup>48</sup> SOVA, *supra* note 48.

<sup>49</sup> *Id.*

<sup>50</sup> *Russia Internet Blacklist Law Takes Effect*, BBC NEWS TECH., 31 Oct. 2012, <http://www.bbc.co.uk/news/technology-20096274> (last updated March 3, 2013, 8:06PM); Claire Bigg, *Russia's Internet 'Blacklist' Law Sparks Free-Speech Fears*, RADIO FREE EUROPE RADIO LIBERTY, <http://www.rferl.org/content/russia-internet-blacklist-free-speech/24758022.html> (last visited Dec. 18, 2012).

<sup>51</sup> *Russia Internet Blacklist Law Takes Effect*, *supra* note 50.

ing censorship include those promoting child pornography, violence, or substance abuse.<sup>52</sup>

While the law's official purpose is to protect children from inappropriate material, the legislation can be read broadly enough to prohibit much more. Not surprisingly, a Moscow court in November ordered that any websites circulating videos of Pussy Riot's performance be shut down pursuant to the anti-extremism law, as the video was deemed a dangerous call to arms for Kremlin protestors across Russia.<sup>53</sup>

No court order is necessary for authorities to remove a harmful site from the web.<sup>54</sup> The blacklist is managed by Roskomnadzor, the federal service for telecom, information technology, and mass communication supervision.<sup>55</sup> The watchdog service fields complaints from citizens, who are encouraged to submit screenshots of offensive material.<sup>56</sup> Within twenty-four hours of the Act for Information's legalization, Roskomnadzor received over 5,000 complaints.<sup>57</sup> Although many of those complaints were rejected,<sup>58</sup> over 180 websites have been shut down since the law's enactment.<sup>59</sup> The blacklist in its entirety is not public, but curious citizens can search a government-regulated registry to see if a particular website has been blocked.<sup>60</sup>

Human rights organizations and journalist advocacy groups, as well as the Russian search engine Yandex, the social media website Mail.Ru, and Wikipedia's Russian language affiliate, have all expressed concern over the government's new role in monitoring Internet speech.<sup>61</sup>

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<sup>52</sup> *Id.*

<sup>53</sup> *Russian Court Tries To Ban All Online Videos of Pussy Riot*, BBC NEWS, Nov. 29, 2012, <http://www.theatlanticwire.com/global/2012/11/russian-court-tries-ban-all-online-videos-pussy-riot/59433/>.

<sup>54</sup> See Olga Khazan, *Russia's Secret New Internet Blacklist*, WASH. POST, Nov. 9, 2012, <http://www.washingtonpost.com/blogs/worldviews/wp/2012/11/09/russias-secret-new-internet-blacklist/>.

<sup>55</sup> See *Federal Service for Supervision in the Sphere of Telecom, Information Technologies and Mass Communications*, ROSKOMNADZOR, <http://www.rsoc.ru/eng/> (last visited Jan. 12, 2013).

<sup>56</sup> See Khazan, *supra* note 54.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> See Federal Service for Supervision of Communications, Information Technology and Mass Communication, *supra* note 55.

<sup>61</sup> See *Russia Internet Blacklist Law Takes Effect*, *supra* note 50; see also Dara Kerr, *Wikipedia Blackout in Russia to Protest Censorship*, CNET NEWS, July 9, 2012, [http://news.cnet.com/8301-1023\\_3-57469107-93/wikipedia-blackout-in-russia-to-protest-censorship/](http://news.cnet.com/8301-1023_3-57469107-93/wikipedia-blackout-in-russia-to-protest-censorship/).

Russia's efforts to stamp out dissent online extend beyond its own borders, revealing the motives of the Russian government to suppress anti-government dialogue.<sup>62</sup> In July 2012, Russia proposed an amendment to the United Nations' International Telecommunications Regulations Treaty that would have a similar impact as the Act for Information.<sup>63</sup> The amendment would restrict public access to websites designed for "interfering in the internal affairs or undermining the sovereignty, national security, territorial integrity and public safety of other states, or to divulge information of a sensitive nature."<sup>64</sup> Though the United Nations failed to pass the amendment,<sup>65</sup> the proposal suggests Russia's intolerance for government opposition.

Other former Soviet countries have followed in Russia's footsteps, enacting similar laws against political speech. Less visible than the Kremlin, smaller Eurasian countries have pushed free speech infringement further, perhaps forecasting the potential results of the Russian laws. Kazakhstan provides a recent example. Similar to the election protests in Russia, Kazakhstan has seen numerous labor strikes and terrorist acts over the past year and has subsequently been the site of considerable protest.<sup>66</sup> During the peak of the rioting, all telecommunication was cut off, and Twitter was blocked throughout the country.<sup>67</sup> Journalists were banned from going to observe the protests.<sup>68</sup> Ever since, Kazakhstan has clamped down on the media.<sup>69</sup> The nation's information minister, Darkhan Mynbai, announced in September 2012 that media coverage of "emergency situations," including natural disasters and terrorist acts, would be strictly censored.<sup>70</sup> The new policy's purported aim is to dispel rumors, but Mynbai's explanation suggests that, like Russia's Act for Information, the Kazakh regu-

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<sup>62</sup> Dara Kerr, *Amendments to U.N. Treaty Could Censor the Internet*, CNET NEWS, June 24, 2012, [http://news.cnet.com/8301-1023\\_3-57459564-93/amendments-to-u.n-treaty-could-censor-the-internet/](http://news.cnet.com/8301-1023_3-57459564-93/amendments-to-u.n-treaty-could-censor-the-internet/).

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> The version of the Treaty that was accepted and signed by 140 countries at the December 2012 World Conference on International Communications authorized prohibition of spam only. Secretary General of the International Telecommunication Union, Dr. Hamoudoun Toure, stressed that the amendment was not "content-related." Naushad K. Cherrayil, *New U.N. Telecoms Treaty Signed in Dubai*, Dec. 14, 2012, GULF NEWS, <http://gulfnnews.com/business/telecoms/new-un-telecoms-treaty-signed-in-dubai-1.1118727>.

<sup>66</sup> *Minister's Announcement Could Augur Drastic Increase in Censorship*, Reporters without Borders via INTERNEWS, Sept. 14, 2012, <http://en.rsf.org/kazakhstan-minister-s-announcement-could-14-09-2012,43382.html>.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

lations will go further: “‘Questioning the veracity of [official] information or the spokesperson’s competence, criticizing the actions undertaken by authorities, and inciting citizens to act in one way or another’ will be forbidden ‘in all media – TV, print, and Internet.’”<sup>71</sup>

Belarus has outdone Russia with its Internet monitoring leading up to the nation’s 2012 elections.<sup>72</sup> In August, a human rights watch organization, Viasna, reported that the Belarusian government had blocked news websites expressing viewpoints oppositional to President Aleksandr Lukashenko (who is known throughout the global community as “Europe’s Last Dictator”).<sup>73</sup> Authorities also censored electoral addresses on statewide television made by Lukashenko’s opposing party and omitted any “references to the plight of Belarus’s political prisoners or Belarus’s serious economic crisis.”<sup>74</sup> “Lukashenk[o]’s attitude towards the media is summed up by his statement that he ‘supports a free press as long as it is responsible and helps his presidency.’”<sup>75</sup>

Similar to Lukashenko’s actions to censor media leading up to the 2012 elections, in the months prior to a 1996 referendum, the president prohibited his opponents from using the government-operated media but continued using it himself.<sup>76</sup> Prior to the 2001 presidential election, which Lukashenko won with a staggering 76 percent of the vote, government officials confiscated the publishing equipment of one independent newspaper and closed down two other independent printing houses.<sup>77</sup>

Russia could do the same. Substantively, opposing parties’ political platforms are not far removed from Navalny’s Good Machine of Truth. Eventually, Russian speech laws could become as strict as other suffering democracies like Ecuador, which enacted a new media law outlawing articles “that ‘have a bearing, in favor of or against any

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<sup>71</sup> *Id.*

<sup>72</sup> *Opposition Journalists and Cyber Dissidents Hounded in Run-Up to Election*, Reporters without Borders via INTERNEWS, Sept. 3, 2012, <http://en.rsf.org/belarus-opposition-journalists-and-cyber-03-09-2012,43321.html>.

<sup>73</sup> *Id.*; see also Eric R. Reed, *Descent into Authoritarianism: Barriers to Constitutional Rule in Belarus*, 28 HASTINGS INT’L & COMP. L. REV. 147, 151 (2004-2005); Andrej Dynko, *Belarus: Europe’s Last Dictatorship*, N.Y. TIMES, July 16, 2012, [http://www.nytimes.com/2012/07/17/opinion/belarus-europes-last-dictatorship.html?\\_r=0](http://www.nytimes.com/2012/07/17/opinion/belarus-europes-last-dictatorship.html?_r=0) (noting Condoleezza Rice first coined the expression ‘Belarus as Europe’s last dictatorship’ in 2006).

<sup>74</sup> *Opposition Journalists and Cyber Dissidents Hounded in Run-Up to Election*, *supra* note 72.

<sup>75</sup> Reed, *supra* note 73 (citing RETT A. LUDWICKOWSKI, CONSTITUTION-MAKING IN THE REGION OF FORMER SOVIET DOMINANCE 100, 101 (1996)).

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

candidate, proposal, option, electoral preference or political thesis.”<sup>78</sup> Similarly, the Egyptian government removed every *Al-Dustour* newspaper from the stands when, following the country’s first presidential election, it ran an article criticizing the president’s political affiliation.<sup>79</sup>

Even if political speeches themselves, like those blacked out in Belarus, are not deemed extremist by Russian authorities, it will be very difficult for Putin’s political opponents to generate a following without being able to communicate and disseminate information online.<sup>80</sup>

### C. *Laws Curbing Public Gatherings*

The issue is confounded by citizens’ inability to gather publicly under the newly amended Law on Rallies.<sup>81</sup> New measures were enacted on the eve of a scheduled mass demonstration in June, imposing steep fines on those who either organize or participate in unapproved rallies, or whose rallies are allowed but violate strict new conditions on

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<sup>78</sup> Frida Ghitis, *New ‘Democracies’ Failing if Speech Isn’t Free*, CNN, Aug. 22, 2012, <http://www.cnn.com/2012/08/22/opinion/ghitis-press-freedom/index.html>.

<sup>79</sup> *Id.* Every issue was removed from the newsstands when *Al-Dustour* newspaper published accusations against the Muslim Brotherhood (of which newly-elected President Mohamed Morsy was a member) after the country’s first presidential election. *Id.* The newspaper’s editor, Islam Affi, and other journalists from the paper were charged with insulting the President. *Id.* The Egyptian legislature recently hand-picked fifty new newspaper editors; including Salah Abdel Maksoud, a member of the Muslim Brotherhood who Morsy selected as Information Minister. *Id.* But see *Egypt Bans Detention of Journalists, Islam Afifi, Editor of Opposition Paper Charged with Insulting President Morsi, Released After President Issues Decree*, GUARDIAN, Aug. 24, 2012, <http://www.guardian.co.uk/world/2012/aug/24/egypt-bans-detention-journalists> (noting even after President Morsy released Affi and issued a decree banning detention of journalists, Affi was still tried in September).

<sup>80</sup> With the potential to blacklist all of YouTube, the Russian censorship laws are reminiscent of Iran’s Internet policies. Like Russia, Iran is known for torturing and imprisoning journalists as well as blocking unflattering websites. Additionally, the Iranian government has vowed to stop using the Internet by the end of 2013 because it is “untrustworthy.” Samuel Blackstone, *Iran Plans To Stop Using the Internet by 2013*, BUS. INSIDER, Aug. 9, 2012, <http://www.businessinsider.com/iran-plans-to-stop-using-the-internet-by-2013-2012-8>. Iran’s goal to abandon the global Internet follow in the footsteps of North Korea and Cuba, which have both opted for a national intranet. *Id.*

<sup>81</sup> *Main Amendments to Laws on Rallies*, *supra* note 46; see David M. Herszenhorn, *New Russian Law Assesses Heavy Fines on Protestors*, N.Y. TIMES, June 8, 2012, <http://www.nytimes.com/2012/06/09/world/europe/putin-signs-law-with-harsh-fines-for-protesters-in-russia.html>.

demonstration permits.<sup>82</sup> The amended fines for violations—up to \$9,000 for individual participants, \$18,000 for organizers, and \$30,000 for groups or companies— are nearly triple those that existed prior to the amendments.<sup>83</sup> The heightened penalties are astronomical when considering that the average Russian’s annual income is \$8,500.<sup>84</sup> The risk of such a steep fine will likely scare members of the middle class from protesting at all.<sup>85</sup> In addition to the increase in fines for violators, the amended law prohibits anyone with prior convictions for dis-sidence from organizing demonstrations.<sup>86</sup> Incidentally, this provision would forbid Alexei Navalny from leading any more rallies and would ban the members of Pussy Riot from organizing demonstrations.

The Law on Rallies gives government officials considerable leverage to suppress the “antigovernment street protests” that erupted and have been brewing since the presidential and Duma elections.<sup>87</sup> The mere threat of sanctions has already proven effective in preventing protests.<sup>88</sup> Sergei Mitrokhin, the leader of a liberal opposition party, responded to the law as an overarching “ban on rallies and political actions.”<sup>89</sup> He told a news agency, “Now, anyone can be punished with slave’s work or an astounding fine. I cannot call people to a rally knowing in advance that from there they may be sent to the galleys.”<sup>90</sup>

Again, the amendments to the Law on Rallies could conceivably be interpreted to outlaw a wide array of public meetings. Now that extremist speech is banned from the Internet, how can Russians exchange opinions and information? The Law on Rallies has the potential to prohibit even the most non-threatening of information sessions or town hall meetings. Taken in concert with the Act for Information and anti-extremism laws, the new amendments, read broadly, have the power to restrict all political speech outside of the home.

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<sup>82</sup> See Herszenhorn, *supra* note 81.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> See *Russia Protest Bill: Vladimir Putin Supports Controversial Anti-Protest Law*, HUFFINGTON POST, May 23, 2012, [http://www.huffingtonpost.com/2012/05/23/russia-protest-bill-president-vladimir-putin\\_n\\_1538990.html](http://www.huffingtonpost.com/2012/05/23/russia-protest-bill-president-vladimir-putin_n_1538990.html).

<sup>86</sup> *Main Amendments to Laws on Rallies*, *supra* note 46; see also Herszenhorn, *supra* note 81 (“[A]ll evidence indicated that the law was forced through the State Duma by the presidential administration, [ . . . ] a grave mistake given the apparent trampling of constitutional rights. [ . . . ] ‘People who do not agree with the authorities turn out not to have full rights.’”).

<sup>87</sup> Herszenhorn, *supra* note 81.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

D. *Extra-Legal Methods of Stamping Out Dissident Speech*

It is important to point out that the new legislation is not the first time Russian officials have attempted to monitor speech.<sup>91</sup> Nor is legislation the only means through which Putin and former leaders have controlled discourse.<sup>92</sup> The most significant curtailment of free speech still occurs outside of the legislature, aided by widespread intimidation tactics.<sup>93</sup> Over the past few decades, the Russian government has strong-armed the media by making examples of unwelcome outspokenness.<sup>94</sup>

For example, Mikhail Khodorkovsky has been in a Siberian prison since challenging then-Prime Minister Putin in 2003.<sup>95</sup> Khodorkovsky was the owner of a prominent oil company and the richest man in Russia when he accused Putin of being corrupt.<sup>96</sup> Considered Putin's "biggest political liability," Khorkovsky was imprisoned and convicted in two ludicrous show trials.<sup>97</sup> Much like the Pussy Riot trials, where the defendants awaited their verdict in cages, the publicity and harshness of Khorkovsky's treatment sent a stern message to other potential dissidents.<sup>98</sup>

More than prosecution, the assassination of journalists has also effectively silenced much anti-Kremlin sentiment in the media. Fifty-four journalists have been murdered in Russia since 1992.<sup>99</sup> Almost 40 percent of the slain writers covered war.<sup>100</sup> One-third covered government corruption, another one-third covered politics, and one-quarter of the journalists who were killed wrote on crime.<sup>101</sup>

The most notable journalist assassinated was Anna Politkovskaya, who was gunned down in 2006 in broad daylight before her final novel, *A Russian Diary: A Journalist's Final Account of a Country*

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<sup>91</sup> See, e.g., Masha Gessen, *The Wrath of Putin*, VANITY FAIR, Apr. 2012, <http://www.vanityfair.com/politics/2012/04/vladimir-putin-mikhail-khodorkovsky-russia>; *Journalists Killed in Russia*, COMMITTEE FOR THE PROTECTION OF JOURNALISTS, *supra* note 15. In 2010, the Committee for the Protection of Journalists listed Russia as the fourth-most dangerous nation in the world for journalists.

<sup>92</sup> *The Wrath of Putin*, *supra* note 91; *Journalists Killed in Russia*, *supra* note 15.

<sup>93</sup> *Journalists Killed in Russia*, *supra* note 15.

<sup>94</sup> *Id.*

<sup>95</sup> Masha Gessen, *supra* note 91.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> See generally *id.* (describing the apparent lack of freedom and law in Russian society).

<sup>99</sup> *Journalists Killed in Russia*, *supra* note 15.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*



*Moving Backward*,<sup>102</sup> was published, and after having recently completed *Putin's Russia: Life in a Failing Democracy*.<sup>103</sup> Investigators determined that the assassin had stalked the renowned journalist for five days but waited to kill her until October 7, Putin's birthday.<sup>104</sup> Though Politkovskaya's murder was never solved, the consensus among investigators is that the motive was to intimidate Russian journalists who might find themselves, like Politkovskaya, inclined to condemn President Putin.<sup>105</sup> The top investigator on the murder, Petros Garibyan, made his opinion about the killer's motive clear: "First and foremost, [the killer] sought a demonstrative and resonant act aimed at intimidating all of you—journalists—as well as society and the authorities."<sup>106</sup>

Prophetically, Politkovskaya wrote in an article two years before her death:

"We are hurtling back into the Soviet abyss, into an information vacuum that spells death from our own ignorance. All we have left is the [I]nternet, where information is still freely available. For the rest, if you want to go on working as a journalist, it's total servility to Putin. Otherwise, it can be death, the bullet, poison, or trial—whatever our secret services, Putin's guard dogs, see fit."<sup>107</sup>

Sadly, Russia's Act for Information now controls what Politkovskaya felt was the last hope for free speech.

#### IV. PROJECTING THE FUTURE OF RUSSIAN DEMOCRACY

Free speech is of focal importance for the health and longevity of a democracy. The anti-extremism law, Act for Information blacklist law, and amendments to the Law on Rallies systematically strip Russians of their ability to voice and, perhaps more importantly, hear opinions about their government. Unable to access information about the opposition movement, the Russian people will no longer have a stake in the government. Each of the recently enacted free speech laws is disconcerting on its own. Taken in sum, however, the laws signal a

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<sup>102</sup> ANNA POLITKOVSKAYA, *A RUSSIAN DIARY: A JOURNALIST'S FINAL ACCOUNT OF A COUNTRY MOVING BACKWARD* (2007).

<sup>103</sup> ANNA POLITKOVSKAYA, *PUTIN'S RUSSIA: LIFE IN A FAILING DEMOCRACY* (2004).

<sup>104</sup> Anna Kordunsky, *Russian Investigator Speaks about Anna Politkovskaya Killing*, N.Y. TIMES, Nov. 9, 2012, [http://www.nytimes.com/2012/11/10/world/europe/russian-investigator-speaks-about-anna-politkovskaya-killing.html?\\_r=0](http://www.nytimes.com/2012/11/10/world/europe/russian-investigator-speaks-about-anna-politkovskaya-killing.html?_r=0).

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> Anna Politskovskaya, *Poisoned by Putin*, GUARDIAN, Sept. 9, 2004, <http://www.guardian.co.uk/world/2004/sep/09/russia.media>.

troubling and ominous retreat for the Russian Federation into a regime reminiscent of the Soviet era.

The aim, or at least a major practical consequence, of these practices seems to be self-regulation. Just as the numerous assassinations of journalists has intimidated many in the field into backing off of their criticism of Putin, the threat of steep financial penalties and imprisonment will scare many citizens into silence. Even those who are unafraid, like Navalny and Khordorkovsky, will eventually be arrested, prosecuted, and incarcerated. Once enough dissidents are jailed, there will be less need for enforcement and fewer occasions for oversight. Fortunately, the Pussy Riot scandal has brought attention to the potential for governmental abuse of the new legislation; however, because of Putin's systemic stronghold over the legislature and silencing of political discourse, short of a revolution, little can be done to oust him.<sup>108</sup>

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<sup>108</sup> See generally David Hearst, *Putin's Repressive Regime Has Frozen Russia's Heart*, *Guardian*, Dec. 21, 2012, <http://www.guardian.co.uk/commentisfree/2012/dec/21/putins-repressive-regime-frozen-russia-heart> (describing recent legislative action and suggesting that the only way to get rid of Putin is through "Russia's next perestroika").