



Written Testimony of the American Civil Liberties Union

**Submitted for the Record
U.S. House Committee on Small Business
Weaponizing Federal Resources: Exposing the SBA's Voter Registration Efforts
Hearing on June 4, 2024**

The American Civil Liberties Union (ACLU) is a nonpartisan, nationwide organization with millions of members and supporters dedicated to defending the principles of liberty and equality embodied in our Constitution and civil rights laws. For over 100 years, the ACLU has been our nation’s guardian of civil liberties and civil rights, working in the courts, legislatures, and communities to defend and preserve the Constitution and laws of the United States. The ACLU’s Voting Rights Project was established in 1965, the same year that the Voting Rights Act was enacted, and has filed more than 400 lawsuits to enforce our country’s voting laws and constitutional protections. In addition to our work in the courts, the ACLU’s National Political and Advocacy Department leads the ACLU’s efforts to protect and strengthen federal laws that promote an equitable and fully inclusive democracy.

On March 8, 2021, the Biden administration issued an Executive Order on Promoting Access to Voting (herein after “EO”).¹ The purpose of this EO is to “protect and promote the exercise of the right to vote, eliminate discrimination and other barriers to voting, and expand access to voter registration and accurate election information” and to “ensure that registering to vote and the act of voting be made simple and easy for all those eligible to do so.”²

The EO was issued to encourage federal agencies to promote voter registration opportunities pursuant to long standing federal law – namely, the National Voter Registration Act (“NVRA”).³ The NVRA was passed in 1993 — over 30 years ago — with bi-partisan support. The EO embraces the original intent of the National Voter Registration Act, which dictates that the federal government be actively involved in providing nonpartisan voter registration services. When enacting the NVRA, Congress declared it the “duty of the *federal*, state, and local governments to promote the exercise of [the] right [to vote]”.⁴

Congress passed the NVRA in 1993 to address the discriminatory role voter registration plays in our elections. More than 30 years later, the NVRA has helped address this discrimination and close gaps in registration rates, particularly by requiring states to offer registration opportunities to eligible individuals who interact with state and local agencies such as departments of motor vehicles and public assistance agencies. But rates of registration among Black and brown people and people with low incomes are still disproportionately lower, preventing them from exercising their fundamental right to vote. In passing the NVRA, Congress contemplated a role for federal agencies in expanding access to voter registration opportunities. The plain language of the NVRA specially declares that states should designate “Federal and nongovernmental offices,

¹ The White House, Executive Order 14019 Promoting Access to Voting, March 7, 2021, *available at* <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/03/07/executive-order-on-promoting-access-to-voting/>.

² *See* Executive Order on Promoting Access to Voting, March 7, 2021, *available at* <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/03/07/executive-order-on-promoting-access-to-voting/>.

³ National Voter Registration Act of 1993, 52 U.S.C. §§ 20501 *et seq.*, May 20, 1993.

⁴ 52 U.S.C. § 20501(a)(2) (emphasis added). The NVRA also specifically requires that the executive branch of the federal government assist with implementation of the NVRA “to the greatest extent practicable.” 52 U.S.C. § 20506(b).

with the agreement of such offices,” as voter registration agencies.⁵ The EO strongly encourages implementation of this underused but vital provision of the NVRA. This was always the intent of Congress, and the fact that this provision has not been utilized until recently does not change the language in the statute or the clear intent of Congress in enacting the NVRA. The EO is completely consistent with the provisions in this long-standing federal law.

In the midst of continuing voting rights attacks across the country, this EO provides an unprecedented opportunity for the federal government to provide meaningful opportunities to register to vote, and expand access to the ballot for millions of Americans. The EO is helping to better achieve the goals and intent of the NVRA by engaging the federal government’s many existing programs to offer eligible individuals meaningful nonpartisan opportunities to register to vote.

Moreover, ensuring our federal agencies do all they can to expand access to voter registration is the right thing to do. The Small Business Administration’s (SBA) efforts to work with the Michigan Secretary of State to provide their constituencies nonpartisan opportunities to register to vote is consistent with the long-standing purpose and goal of Congress when it enacted the NVRA. These activities should be upheld as a great example of state and federal cooperation to strengthen democracy under existing federal law. Moreover, the SBA has been very clear it is willing to work with election officials in any state, and the ACLU encourages every state to work with the SBA and other federal agencies to expand access to nonpartisan voter registration opportunities under existing federal law.⁶

Government at every level, including the federal government, should use every tool possible to help assist all eligible American citizens to register and vote. Tens of millions of eligible Americans are currently not registered to vote, with the lowest rates of registration among people with low incomes and people of color. Approximately 63 million eligible Americans are not registered to vote (approximately 27% of eligible voters),⁷ and registration rates are lowest among Americans with low incomes (59% for families with incomes below \$30k/yr. compared to 83% for those above \$150k/yr.).⁸ Additionally, eligible voters of color have lower registration

⁵ 52 U.S.C. § 20506(a)(3)(B)(ii).

⁶ The White House, Press Release, Fact Sheet: The Biden-Harris Administration is Taking Action to Restore and Strengthen American Democracy, December 8, 2021, *available at* <https://www.whitehouse.gov/briefing-room/statements-releases/2021/12/08/fact-sheet-the-biden-harris-administration-is-taking-action-to-restore-and-strengthen-american-democracy/>. *See also* SBA Administrator Guzman Press Release, March 23, 2024, *available at* <https://www.sba.gov/article/2024/03/19/sba-administrator-guzman-announces-agencys-first-ever-voter-registration-agreement-michigan>.

⁷ U.S. Census, Voter Registration, Voting and Registration in the Election of November 2020, November 2020, *available at* <https://www.census.gov/content/dam/Census/library/publications/2022/demo/p20-585.pdf>.

⁸ American Civil Liberties Union & Demos, Why and How to Do Voter Registration at Federal Agencies, September 2021, *available at* <https://www.demos.org/sites/default/files/2021->

rates than white eligible voters.⁹ These voter registration disparities are harmful to our democracy. The lack of registration has been cited by non-voters as the top reason for failing to vote in 2020 (29% of non-voters, or about 23 million of 80 million non-voters).¹⁰

Furthermore, there are no valid objections to the SBA's activities to fulfill its duties under this EO and the NVRA pursuant to the request of states. The EO is firmly constitutional and, as noted above, is grounded in the NVRA which has existed for decades and has been deemed constitutional by the U.S. Supreme Court.¹¹ In passing the NVRA, Congress contemplated a role for federal agencies in expanding access to voter registration opportunities. The plain language of the NVRA's findings are clear that "it is the duty of the *Federal*, State, and local governments to promote the exercise of that right" to vote.¹² Therefore, any actions by the federal government to help with nonpartisan voter registration opportunities are conducted pursuant to a valid, constitutional act of Congress. While much of voting and voter registration is left up to the states, the Constitution is clear in the Elections Clause that Congress has the authority to regulate the "Time, Place and Manner" of federal elections.¹³ Congress is empowered to impose federal regulation of voter registration and voting in federal elections on top of state voter registration systems. In a majority opinion written by Justice Scalia in 2013, the Supreme Court confirmed that the NVRA is constitutional under the Election Clause of the Constitution.¹⁴ The federal government offering nonpartisan voter registration assistance is permissible under this clear and valid act of Congress.

To conclude, Executive Order 14019 on Promoting Access to Voting offers an unprecedented opportunity for the federal government to fulfill its duty to expand access to nonpartisan voter registration opportunities to millions of eligible voters, especially in communities that face significant barriers to registering to vote. Every state should work with the SBA and other federal agencies to provide impactful nonpartisan voter registration opportunities in the ordinary course of business to help close voter registration gaps, increase access to the ballot, and ultimately bring us closer to a stronger democracy. Moreover, we urge Congress to support agency efforts to implement this EO, and prioritize the passage of foundational voting rights legislation like the John Lewis Voting Rights Advancement Act to restore and strengthen the landmark Voting Rights Act of 1965.

09/Why%20and%20How%20to%20do%20Voter%20Registration%20at%20Federal%20Agencies%5B42%5D.pdf.

⁹ See *supra* n.7, U.S. Census, Voter Registration, Voting and Registration in the Election of November 2020, November 2020.

¹⁰ NPR, *Poll: Despite Record Turnout, 80 Million Americans Didn't Vote. Here's Why*, available at <https://www.npr.org/2020/12/15/945031391/poll-despite-record-turnout-80-million-americans-didnt-vote-heres-why>.

¹¹ *Arizona v. Inter-Tribal Council of Ariz., Inc.*, 570 U.S. 1 (2013).

¹² 52 U.S.C. § 20501(a)(2) (emphasis added).

¹³ Art. I, §4, cl. 1.

¹⁴ See *supra* n.11.