

**STATEMENT FOR THE RECORD
BEFORE THE HOUSE COMMITTEE ON SMALL BUSINESS**

**HEARING ON
WEAPONIZING FEDERAL RESOURCES: EXPOSING THE SBA'S VOTER
REGISTRATION EFFORTS**

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Chairman Williams, Ranking Member Velázquez, and members of the Committee, thank you for the opportunity to provide this statement regarding the Small Business Administration's voter registration efforts pursuant to Executive Order 14019 on Promoting Access to Voting.²

Citizens for Responsibility and Ethics in Washington ("CREW") is a non-partisan, non-profit organization committed to ensuring the integrity of our government institutions and promoting ethical governance. A core part of CREW's work has been enforcing the federal Hatch Act, a law that prohibits the abuse of government resources for partisan political gain by government employees. In recent years, CREW has filed numerous Hatch Act complaints against executive branch officials including in the Trump administration as well as the Biden administration.³

Executive Order 14019

On March 7, 2021, President Biden signed Executive Order 14019, citing the significant obstacles that many Americans, including people of color and people with disabilities have faced and continue to confront in accessing voter registration,

¹ CREW staffers Virginia Canter, Jordan Pilant, and Esther Eriksson von Allmen contributed to the drafting of this statement.

² Exec. Order No. 14019, 86 Fed. Reg. 13623 (Mar. 7, 2021), available at <https://www.federalregister.gov/documents/2021/03/10/2021-05087/promoting-access-to-voting>.

³ See e.g., Citizens for Responsibility & Ethics in Washington, *CREW files Hatch Act complaint against Sonny Perdue* (Aug. 26, 2020),

<https://www.citizensforethics.org/news/press-releases/crew-files-hatch-act-complaint-against-sonny-perdue/>; see also Citizens for Responsibility & Ethics in Washington, *CREW files Hatch Act complaint against Psaki* (Oct. . 15, 2021),

<https://www.citizensforethics.org/legal-action/legal-complaints/crew-files-hatch-act-complaint-against-psaki/>.

election administration information, and polling places.⁴ The executive order aims to ensure that the federal government promotes and defends “the right to vote for all Americans who are legally entitled to participate in elections” and supports “Federal employees who wish to volunteer to serve as non-partisan poll workers or non-partisan observers, particularly during early or extended voting periods.”⁵ The Executive Order also directed executive departments and agencies to “partner with State, local, Tribal, and territorial election officials 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.”⁶

Nothing in the text of Executive Order 14019 authorizes the promotion of voter registration efforts for one party or another or violates the Hatch Act’s prohibition on the use of federal resources for partisan politics. In fact, the executive order explicitly admonishes agency heads to “evaluate ways in which the agency can, **as appropriate and consistent with applicable law**, promote voter registration and voter participation” and to consider “soliciting and facilitating approved, nonpartisan third-party organizations and State officials to provide voter registration services on agency premises.”⁷ Nothing in the executive order directs or authorizes “weaponizing federal resources” or preferencing any party or state for voter registration efforts.

The Office of Special Counsel (OSC), which oversees implementation and enforcement of the Hatch Act, has routinely provided guidance that federal employees may participate in non-partisan voter registration drives while on duty. For example, a 2004 advisory opinion states:

Therefore, provided that the voter registration drive remains nonpartisan, for example, registrants are not solicited on the basis of political party or candidate preference and there is no advocacy or display of support for a particular party or candidate during the drive, we do not believe that the Hatch Act would prohibit XXX employees, while on duty or in the federal workplace, from participating in a voter registration drive conducted by [XXX].⁸

⁴ Exec. Order No. 14019, *supra* note 1.

⁵ *Id.* at 13623, 13625.

⁶ *Id.* at 13623.

⁷ *Id.* at 13623, 13624 (emphasis added).

⁸ See e.g., Nonpartisan Voter Registration Drives in the Workplace, Advisory Op. O.L.C., 2 (2004), available at <https://osc.gov/Documents/Hatch%20Act/Advisory%20Opinions/Federal/Nonpartisan%20Voter%20Registration%20Drives%20in%20the%20Workplace.pdf>.

In May of 2022, OSC issued guidance specifically related to the implementation of Executive Order 14019. In response to Office of Personnel Management guidance pursuant to the executive order about federal employees serving as poll workers, OSC explained that “The Hatch Act does not prohibit any federal employee from authorizing the use of, or using, administrative leave to serve as nonpartisan poll workers or participate in nonpartisan poll observer activities ... Thus, it is important for federal employees to understand the difference between nonpartisan poll activities and partisan poll activities.”⁹ This notice makes clear that OSC has and will continue to provide guidance as needed to ensure implementation of Executive Order 14019 in compliance with the Hatch Act.

Democracy and the Business Community

Protecting the right to vote and free and fair elections are the foundation of a functional democracy. While those freedoms have come under significant threat in recent years, culminating in the Capitol insurrection on January 6, 2021, every branch of our government must work to ensure that all voters can vote and have their vote counted. There is ample research and polling that make clear that a vibrant democracy is essential to promoting American business. In May 2022, a research study conducted by the Business & Democracy Initiative “found that 96% of business leaders believe the existence of a well-functioning democracy is important to a strong economy.”¹⁰ Likewise, a report based on research from Freedom House and the World Bank found that “[s]table, 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.”¹¹ According to an April 2024 report by the Brookings Institution, “Democracy is a strong driver of a healthy economy. Economists have found that democratization causes an increase

⁹ Office of Special Counsel, *The Hatch Act and the Use of Administrative Leave to Participate in Nonpartisan Poll Activities* (May 18, 2022), <https://osc.gov/Documents/Hatch%20Act/Advisory%20Opinions/Federal/Use%20of%20Administrative%20Leave%20to%20Participate%20in%20Nonpartisan%20Poll%20Activities.pdf>.

¹⁰ Rhett Buttle, *American Public Continues to Believe in the Power of Small Business and Entrepreneurship*, *Forbes* (July 13, 2022), <https://www.forbes.com/sites/rhettbuttle/2022/07/13/american-public-continues-to-believe-in-the-power-of-small-business-and-entrepreneurship/?sh=1c12b61e10ec>.

¹¹ Sarah Repucci, *Democracy is Good for Business*, Freedom House (Aug. 3, 2015), <https://freedomhouse.org/article/democracy-good-business>.

in GDP per capita of between 20% and 25%. Conversely, there is also indisputable evidence of the economic costs of democratic decline.”¹²

SBA’s Memorandum of Understanding with the Michigan Department of State

On March 20, 2024, the Michigan Department of State (MDOS) and the Small Business Administration (SBA) announced entering into a memorandum of understanding (MOU) whereby MDOS “will create a unique URL for the SBA to use to drive online visitors to register to vote.”¹³ In addition, “SBA’s Michigan field office may also allow MDOS officials to conduct in-person voter registration at the SBA’s small business outreach events.”¹⁴ The MOU explicitly states that “Nothing in this MOU is intended to conflict with current law(s), regulation(s), or the directives of SBA.”¹⁵ The SBA website includes clear guidance to employees from the SBA Office of Inspector General on “Hatch Act Permitted and Prohibited Activities” noting that they “[m]ay assist in non-partisan voter registration drives” and “[m]ay not assist in partisan voter registration drives” or “be active in partisan political campaigns.”¹⁶ While the MOU between SBA and MDOS is a “first-of-its-kind collaboration for the SBA,” there is no evidence that the MOU limits participation or access in any way to members of one political party or another.¹⁷ Nor is there any indication that other states cannot or will not enter into similar agreements with SBA to promote civic participation.

Ensuring Legal Compliance in Implementation of Executive Order 14019

Despite the explicit text of Executive Order 14019 admonishing agency heads to comply with applicable law and consider non-partisan consultation, and the SBA

¹² Vanessa Williamson, *Democracy is Good for the Economy. Can Business Defend It?*, Brookings (Apr. 29, 2024), <https://www.brookings.edu/articles/democracy-is-good-for-the-economy-can-business-defend-it/>.

¹³ Michigan Department of State, *Michigan Department of State, U.S. Small Business Administration Announce Voter Registration Agreement* (Mar. 19, 2024), <https://www.michigan.gov/sos/resources/news/2024/03/20/mdos-and-us-small-business-administration-announce-voter-registration-agreement>.

¹⁴ *Id.*

¹⁵ *Memorandum of Understanding between the Michigan Department of State and the U.S. Small Business Administration for Online Voter Registration*, 3 (Mar. 18, 2024), <https://static.foxnews.com/foxnews.com/content/uploads/2024/05/REDACTED-02-URL-MOU-MDOS-and-SBA-Final-Version.pdf>.

¹⁶ Office of Special Counsel, *The Hatch Act Permitted and Prohibited Activities for Federal Employees Subject to Further Restrictions* (Feb. 2018), <https://osc.gov/Documents/Outreach%20and%20Training/Posters/The%20Hatch%20Act%20and%20Further%20Restricted%20Employees%20Poster.pdf>.

¹⁷ Small Business Administration, *SBA Administrator Guzman Announces Agency’s First-Ever Voter Registration Agreement with Michigan Department of State* (Mar. 19, 2024), <https://www.sba.gov/article/2024/03/19/sba-administrator-guzman-announces-agencys-first-ever-voter-registration-agreement-michigan>.

MOU's compliance language, if there are violations of the Hatch Act that occur in the course of federal agencies' implementation of Executive Order 14019, the Office of Special Counsel is well-equipped to respond with vigorous enforcement.

OSC has policed this kind of conduct for decades and identified robust factors in determining whether a voter registration drive is partisan.¹⁸ Some of the factors relevant to this inquiry include:

- 1) the political activities of the sponsoring organization; 2) the degree to which that organization has become identified with the success or failure of a partisan political candidate, issue or party (e.g., whether it has endorsed a candidate); 3) the nexus, if any, between the decision to undertake a voter registration drive and the other political objectives of the sponsor; 4) whether particular groups are targeted for registration on the basis of their perceived political preference; and 5) the nature of publicity circulated to targets of the drive immediately prior to or during the drive.¹⁹

Last month, Special Counsel Hampton Dellinger announced policy changes that will strengthen enforcement of the Hatch Act against political appointees, including in the White House.²⁰ In response to longstanding compliance challenges, OSC will now bring appropriate cases for disciplinary action against White House commissioned officers or other White House staffers who violate the Hatch Act to the Merit Systems Protection Board (MSPB) rather than refer such misconduct to the President.²¹ OSC will also refer to the MSPB Hatch Act cases warranting disciplinary action against "individuals who engaged in misconduct while a federal employee but who subsequently left government service before OSC investigated and filed an enforcement action."²² Although there is no evidence that OSC has found a White House or SBA official to have violated the Hatch Act in the course of implementing Executive Order 14019, these changes serve as an additional check on potential violations.

¹⁸ See e.g., Office of Special Counsel, *Federal Hatch Act Advisory: Voter Registration Drives in the Workplace* (Apr. 14, 2004), <https://osc.gov/Documents/Hatch%20Act/Advisory%20Opinions/Federal/Voter%20Registration%20Drives%20in%20the%20Workplace.pdf>.

¹⁹ *Id.* at 2.

²⁰ Office of Special Counsel, *Special Counsel Dellinger Announces Updates to OSC's Hatch Act Enforcement* (May 20, 2024), <https://osc.gov/News/Pages/24-18-Advisory-Updated-Hatch-Act-Enforcement.aspx>.

²¹ *Id.*

²² *Id.*

Conclusion

Study after study has confirmed that a thriving democracy is critical to promoting economic prosperity and American business. Executive Order 14019's mandate to ensure that all eligible voters can register to vote and have access to the polls is a positive step towards that goal. While the executive order and SBA's MOU take pains to ensure that federal employees comply with the law, including the Hatch Act's prohibition on the use of federal resources for partisan politics, as they implement the order, there are also robust, independent safeguards to investigate potential violations if they occur.