



Written Testimony of

NAACP Legal Defense and Educational Fund, Inc.

Submitted to the

United States House of Representatives Committee on Small Business

In connection with its June 4, 2024 hearing entitled

**“Weaponizing Federal Resources: Exposing the SBA’s Voter
Registration Efforts”**

I. INTRODUCTION

The NAACP Legal Defense & Educational Fund, Inc., (“LDF”) appreciates the opportunity to submit this testimony in connection with the June 4, 2024 hearing of the United States House of Representatives Committee on Small Businesses entitled “Weaponizing Federal Resources: Exposing the SBA’s Voter Registration Efforts.”

At the outset, LDF respectfully notes the title of the hearing is based on a false premise, as it inaccurately suggests that assistance by the Small Business Administration (SBA) with voter registration is improper. Millions of eligible persons in the U.S. are not registered to vote, often because of unnecessary barriers to voter registration, which undermines the goal of a representative democracy in which all voices are heard.¹ Federal agencies and offices have played a role in promoting voter registration since 1955, and when Congress passed the National Voter Registration Act of 1993 (“NVRA”),² it specifically found that “it is the duty of the Federal, State, and local governments” to promote the exercise of the right to vote by assisting with voter registration.³ Small business owners, like other eligible persons, should be encouraged to register to vote by having convenient access to voter registration. LDF applauds the efforts of Michigan and the Small Business Administration to assist in such efforts. More broadly, LDF strongly supports agency-based voter registration as a proven, effective, and nonpartisan tool to increase the numbers of eligible people who register to vote.

II. LDF AND OUR WORK

Founded in 1940 under the leadership of Thurgood Marshall, the first Black U.S. Supreme Court justice, LDF is America’s premier legal organization fighting for racial justice.⁴ Through litigation, advocacy, and public education, LDF seeks structural changes to expand democracy, eliminate disparities, and achieve racial justice in a society that fulfills the promise of equality for all Americans. LDF was launched at a time when the nation’s aspirations for equality and due process of law were stifled by widespread state-sponsored racial inequality and federal indifference. For over eighty years, LDF has had a transformative mission: to achieve racial justice, equality, and an inclusive society, using the power of law, narrative, research, and people to defend and advance the full dignity and citizenship of Black people in America.

Since its founding, LDF has been a leader in the fight to secure, protect, and advance the voting rights of Black voters and other communities of color. LDF’s founder Thurgood Marshall—who litigated LDF’s watershed victory in *Brown v. Board of*

¹ See *infra* at Figure 1.

² 52 U.S.C. §§ 20501–20511, 39 U.S.C. § 3629, .

³ 52 U.S.C. § 20501(a)(2).

⁴ LDF has been an entirely separate organization from the NAACP since 1957.

Education,⁵ which set in motion the end of legal segregation in this country and transformed the direction of American democracy in the 20th century—referred to *Smith v. Allwright*,⁶ the 1944 case ending whites-only primary elections, as his most consequential case. Justice Marshall believed that the right to vote, and the opportunity to access political power, was critical to fulfilling the guarantee of full citizenship promised to Black people in the Reconstruction Amendments to the U.S. Constitution. LDF has prioritized its work protecting the right of Black citizens to vote for more than 80 years: representing Dr. Martin Luther King Jr. and the marchers in Selma, Alabama in 1965; advancing the passage of the Voting Rights Act (VRA), litigating seminal cases interpreting the Act’s scope; and working in communities across the South to strengthen and protect the ability of Black citizens to participate in a political process free from discrimination. In recent years, LDF attorneys have argued key voting cases in the Supreme Court⁷ and successfully challenged discriminatory voting laws in numerous states and localities.⁸

LDF also worked in coalition with a broad array of civil rights and racial justice groups to support the 1993 enactment of the NVRA, and in more recent years has worked to encourage full implementation of the NVRA, including through our support for implementing President Biden’s 2021 Executive Order on Promoting Access to Voting (“EO on Voting”).⁹

III. THE IMPORTANCE OF ACCESS TO VOTER REGISTRATION

The right to vote is foundational to our system of government and essential to all other rights of citizenship. In 49 of the 50 states, eligible persons must register to vote before they can exercise that foundational right.¹⁰ Accordingly, the ease or difficulty of registering to vote, and remaining registered, has an important effect on whether individuals can participate in elections. Even in the relatively high-turnout election of 2020, nearly one-third of eligible persons did not participate.¹¹ Over 63

⁵ 347 U.S. 483 (1954), *supplemented*, 349 U.S. 294.

⁶ 321 U.S. 649 (1944).

⁷ *Alexander v. South Carolina Branch of NAACP*, 602 U.S. ___, 144 S.Ct. 1221, 2024 WL 2335243 (2024); *Allen v. Milligan*, 599 U.S. 1 (2023), 143 S.Ct. 1487 (2023); *Shelby Cnty. v. Holder*, 570 U.S. 529 (2013); *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193 (2009).

⁸ *See, e.g., Nairne v. Ardoin*, 2024 WL 492688 (M.D. La. 2024); *Harding v. Edwards*, 487 F. Supp. 3d 498 (M.D. La. 2020); *Thomas v. Andino*, 613 F. Supp. 3d 926 (D.S.C. 2020); *Jones v. Jefferson Cnty. Bd. of Educ.*, No. 2:19-cv-1821-MHH, 2019 WL 7500528 (N.D. Ala. Dec. 16, 2019); *Veasey v. Abbott*, 249 F. Supp. 3d 868 (S.D. Tex. 2017); *Ga. State Conf. of NAACP v. Fayette Cnty. Bd. of Comm’rs*, 118 F. Supp. 3d 1338 (N.D. Ga. 2015).

⁹ Exec. Order No. 14019, 86 Fed. Reg. 13623 (Mar. 10, 2021),

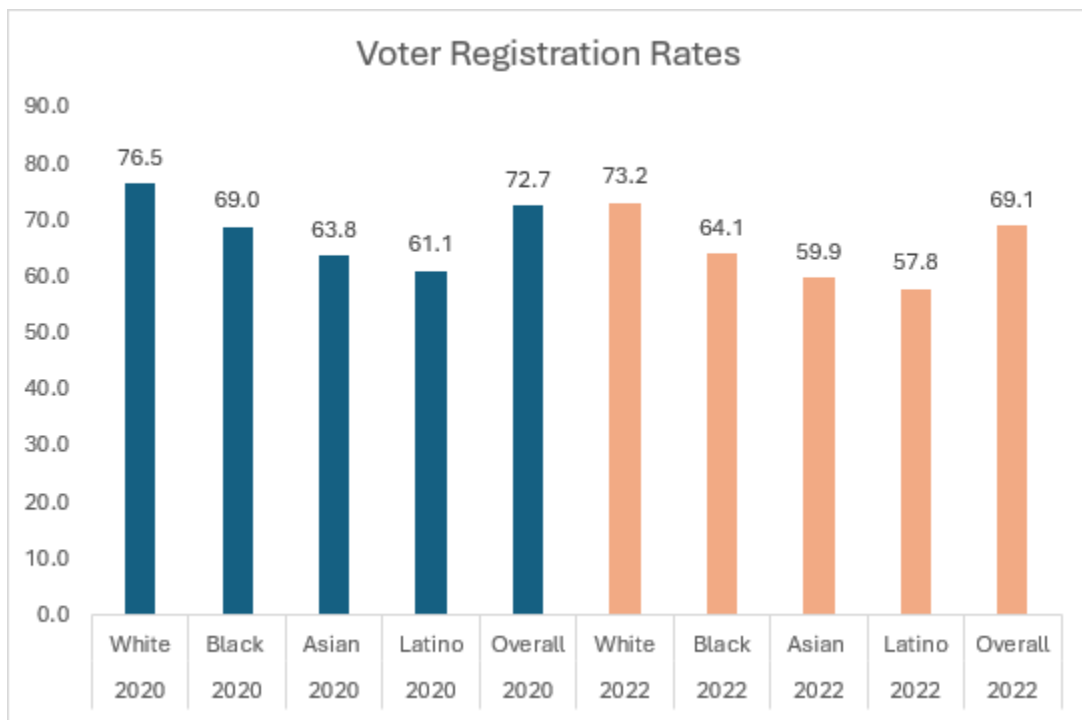
<https://www.federalregister.gov/documents/2021/03/10/2021-05087/promoting-access-to-voting>.

¹⁰ U.S. Election Assistance Comm’n, *Election Administration and Voting Survey 2022 Comprehensive Report* 135 (June 29, 2023), https://www.eac.gov/sites/default/files/2023-06/2022_EAVS_Report_508c.pdf.

¹¹ U.S. Census Bureau, *Voting and Registration in the Election of November 2020 Table 4b: Reported Voting and Registration, by Sex, Race and Hispanic Origin, for States: November 2020* [<1.0 MB] (Apr. 2021), <https://www2.census.gov/programs-surveys/cps/tables/p20/585/table04b.xlsx>.

million eligible persons were not registered to vote.¹² As scholars studying American political participation have noted, “It is a cliché that ‘getting to the starting line’ is often more difficult than running the race, and this sentiment seems applicable for many American citizens when it comes to voting: The requirement to register is a costly and time-consuming obstacle to casting a ballot.”¹³ In addition, voter registration rates among persons of color are often lower than overall voter registration rates, leaving these communities disproportionately underrepresented at the ballot box. Figure 1 shows the extent of these disparities in the two most recent federal elections:

Figure 1



Against this background, the importance of convenient and accessible voter registration is clear.

¹² *Id.* at 3 (showing that the United States had a citizen voting age population of 231,600,000, and registered voter population of 168,300,000, leaving 63,300,000 individuals who are included in the citizen voting age population but who are not registered to vote).

¹³ Christopher B. Mann & Lisa A. Bryant, *If You Ask, They Will Come (to Register and Vote): Field Experiments with State Election Agencies on Encouraging Voter Registration*, 63 *Electoral Stud.* 1, 1 (2020), <https://doi.org/10.1016/j.electstud.2019.02.012>.

IV. AGENCY-BASED VOTER REGISTRATION IS A PROVEN AND EFFECTIVE MEANS OF ENSURING GREATER ACCESS TO VOTING

Congress recognized the importance of providing access to voter registration through government agencies by enacting the NVRA with bipartisan support in 1993.¹⁴ Many people are familiar with the convenience of agency-based registration by having registered to vote when applying for or renewing a driver's license. This is why the NVRA is popularly known as the "Motor-Voter" law. Because millions of people interact with motor vehicle offices, providing voter registration services in these interactions is a proven way to promote access to registration. In just the 2020-2022 reporting period, the NVRA allowed over 44 million people to apply to register to vote or update their registration address through state motor vehicle offices.¹⁵

But agency-based voter registration has never been limited only to driver's license offices. Section 7 of the NVRA has also required government agencies such as federal military recruitment offices, state offices administering public assistance, and state offices serving persons with disabilities, to provide convenient access to voter registration to members of the public they serve.¹⁶ In tapping these additional agencies to provide voter registration services, Congress recognized that not all Americans interact with the DMV on a regular basis, and that many other governmental agencies serve persons who could benefit from convenient access to voter registration as part of their routine interactions with an agency.¹⁷

Section 7 of the NVRA also requires states to expand their agency-based registration beyond the mandatory agencies named in the statute, and specifically names federal agencies as appropriate voter registration sites. States are directed to consider "[f]ederal and nongovernmental offices"¹⁸ in designating additional sites for voter registration. The NVRA further provides that "[a]ll departments, agencies, and other entities of the executive branch of the Federal Government shall, to the greatest extent practicable, cooperate with the States" in carrying out agency-based registration.¹⁹

Thus, the involvement of federal agencies in providing voter registration assistance has been part of the NVRA from its beginning over 30 years ago. Indeed, federal offices were engaged in providing access to voter registration even before the NVRA. Under President Dwight D. Eisenhower, federal legislation enacted in 1955 directed offices of the Executive Branch to provide voter registration access to members of the

¹⁴ National Voter Registration Act of 1993, Pub. L. 103-31 (1993), <https://www.congress.gov/103/statute/STATUTE-107/STATUTE-107-Pg77.pdf>.

¹⁵ U.S. Election Assistance Comm'n, *supra* note 10.

¹⁶ 52 U.S.C. §§ 20506(a), (c).

¹⁷ *See* H.R. Conf. Rep. 103-66 at 19 (1993).

¹⁸ 52 U.S.C. § 20506(a)(3)(B)(ii).

¹⁹ 52 U.S.C. § 20506(b).

military, their families, and other U.S. citizens living abroad.²⁰ A bipartisan Congress in 1985 expanded voter registration assistance to military members and other U.S. citizens living overseas by passing the Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”).²¹

In addition, various Presidential administrations have issued a series of directives within the Veterans Health Administration (VHA) requiring VHA staff to assist inpatients at medical facilities with voter registration and voting. The first was issued in September 2008, under the Bush Administration, and the most recent was issued in October 2019, under the Trump Administration.²² The responsibilities of agency personnel under the 2019 directive include “[o]btaining and maintaining all relevant materials used to assist with voter registration and voting, and collaborating with VA medical facility Social Work Chief or Executive to provide voting assistance to inpatients and residents requesting or requiring assistance with the voting process.”²³

This is the background against which President Biden, on March 7, 2021, issued his Executive Order on Voting. The EO acknowledges the significant obstacles to voting still faced by many eligible citizens and directs all federal agencies to “consider ways to expand citizens’ opportunities to register to vote and to obtain information about, and participate in, the electoral process.”²⁴ Examples of actions that federal agencies have announced in response include:

- In September 2022, the Department of Veterans Affairs announced partnerships with the states of Kentucky, Michigan, and Pennsylvania to create a pilot voter registration program that provides voter registration information, materials and assistance to Veterans, eligible dependents and caregivers in select VA offices.²⁵
- In September 2023, the Shingle Springs Band of Miwok Indians, in cooperation with the California Secretary of State, designated the Tribe’s local health

²⁰ Federal Voting Assistance Act of 1955, Pub. L. 84-296 (1955), <https://www.govinfo.gov/content/pkg/STATUTE-69/pdf/STATUTE-69-Pg584.pdf> (requiring Department of Defense to ensure that overseas military personnel and families, along with other Americans living overseas, could access voter registration and voting).

²¹ Uniformed and Overseas Citizens Absentee Voting Act, Pub. L. 99-410 (1986), <https://www.congress.gov/99/statute/STATUTE-100/STATUTE-100-Pg924.pdf>.

²² U.S. Dep’t of Veterans Aff., *VHA Directive 2008-053: Voting Assistance for VA Patients* (Sept. 8, 2008), https://web.archive.org/web/20130313125230/http://www1.va.gov/vhapublications/ViewPublication.asp?pub_ID=1756; U.S. Dep’t of Veterans Aff., *VHA Directive 1060: Voting Assistance for VA Inpatients and Residents* (Oct. 23, 2019), https://www.va.gov/vhapublications/ViewPublication.asp?pub_ID=8555.

²³ *Id.*

²⁴ Exec. Order No. 14019, *supra* note 9.

²⁵ U.S. Dep’t of Veterans Aff., *VA Announces State Partnerships to Provide Voter Registration Assistance to Veterans* (Sept. 20, 2022), <https://news.va.gov/press-room/va-announces-state-partnerships-to-provide-voter-registration-assistance-to-veterans/>.

center as a voter registration agency under the NVRA,²⁶ and in October 2023, the Arizona Secretary of State designated Phoenix Native Health, an Indian Health Service office, as an NVRA voter registration agency.²⁷

- In March 2022, the Department of the Interior announced plans to work with Kansas and New Mexico to designate “Department-operated post-secondary Tribal institutions—Haskell Indian Nations University in Kansas and the Southwestern Indian Polytechnic Institute (SIPI) in New Mexico—as voter registration agencies under the [NVRA].”²⁸
- The Department of Agriculture’s Rural Housing Service will “encourage the provision of nonpartisan voter information through its borrowers and guaranteed lenders,” and “Rural Development agencies—which are spread throughout field offices across the country where rural Americans can apply for housing, facilities, or business assistance—will take steps to promote access to voter registration forms and other pertinent nonpartisan election information” for persons they serve.²⁹

These initial steps to involve federal agencies in providing voter registration assistance constitute progress toward the NVRA’s original goal of encouraging federal agencies to support this vital task. However, more should be done, as LDF and over 50 additional organizations serving a wide range of communities recognized in a March 2023 report assessing the Administration’s progress toward achieving the goals of the EO on Voting.³⁰ LDF strongly encourages Congress to support these and other efforts to make voter registration more accessible to eligible persons, including Michigan’s recently announced initiative to partner with SBA offices, which we discuss below.

V. MICHIGAN’S DESIGNATION OF THE SBA TO ASSIST WITH VOTER REGISTRATION CLOSELY FOLLOWS CONGRESS’S DIRECTIONS SET FORTH IN THE NVRA.

In March 2024, the Small Business Administration entered into a Memorandum of

²⁶ Native Am. Rts. Fund, *Shingle Springs Voters Gain Voter Registration Access* (Sept. 19, 2023), <https://narf.org/shingle-springs-voters-gain-registration-access/>.

²⁷ Shondiin Silversmith, *Arizona Indian Health Service Facility Becomes First to be Designated a Voter Registration Agency*, *AZ Mirror* (Oct. 20, 2023), <https://azmirror.com/briefs/arizona-indian-health-service-facility-becomes-first-to-be-designated-a-voter-registration-agency/>.

²⁸ Press Release, U.S. Dep’t of the Interior, *Interior Department Takes Steps to Increase Voter Registration in Indigenous Communities* (Dec. 13, 2022), <https://www.doi.gov/pressreleases/interior-department-takes-steps-increase-voter-registration-indigenous-communities>.

²⁹ The White House, *FACT SHEET: Biden Administration Promotes Voter Participation with New Agency Steps* (Sept. 28, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/09/28/fact-sheet-biden-administration-promotes-voter-participation-with-new-agency-steps/>.

³⁰ Leadership Conf. on Civ. & Hum. Rts., *Strengthening Democracy: A Progress Report on Federal Agency Action to Promote Access to Voting* (Mar. 2, 2023), <https://civilrights.org/resource/voting-ee-report/>.

Agreement (“MOA”) and Memorandum of Understanding (“MOU”) with the Michigan Department of State (“MDOS”) to promote civic engagement and voter registration among small business owners in Michigan.³¹

The chief feature of the agreement involves the use of Michigan’s online voter registration system, which Michigan first implemented in 2018 under a bipartisan bill.³²

Under the agreement, the Michigan Department of State will create a unique URL for the SBA through which persons accessing SBA services can use Michigan’s online voter registration system to electronically register to vote. The SBA’s Michigan field office may also allow state election officials to conduct in-person voter registration at the SBA’s small business outreach events.

Michigan’s designation of its SBA offices to provide these online voter registration services is fully consistent with Congress’s instructions in the NVRA. The NVRA requires states to designate “a State officer or employee as the chief State election official to be responsible for the coordination of State responsibilities” under the NVRA.³³ In Michigan, the designated chief election official is the Secretary of State.³⁴ As noted above, Section 7 of the NVRA charges states with the responsibility of designating additional governmental offices beyond state public assistance offices and offices serving persons with disabilities as NVRA voter registration agencies, and specifically names federal offices as permissible agencies, with the agreement of such offices.³⁵ The agreement between the Michigan Department of State and the Small Business Administration closely follows these requirements, and further provides that all actions taken by the SBA under the agreement must comply with the SBA’s governing laws and regulations.³⁶

As an agency designated to provide voter registration services in Michigan under Section 7 of the NVRA, the SBA must follow Section 7’s strict requirements ensuring

³¹ Michigan Dep’t of State & U.S. Small Bus. Admin., *Memorandum of Agreement Between the Michigan Department of State and U.S. Small Business Administration*, <https://docs.house.gov/meetings/SM/SM00/20240523/117369/HMTG-118-SM00-20240523-SD002.pdf>; Michigan Dep’t of State & U.S. Small Bus. Admin., *Memorandum of Understanding Between the Michigan Department of State and U.S. Small Business Administration for Online Voter Registration*, <https://docs.house.gov/meetings/SM/SM00/20240523/117369/HMTG-118-SM00-20240523-SD003.pdf>. See also Press Release, Michigan Dep’t of State, Michigan Department of State, U.S. Small Business Administration Announce Voter Registration Agreement (March 20, 2024), <https://www.michigan.gov/sos/resources/news/2024/03/20/mdos-and-us-small-business-administration-announce-voter-registration-agreement>

³² Greta Bedekovics & Ashleigh Maciolek, *How Michigan Became a Blueprint for Strengthening Democracy* 6, Center for American Progress (June 15, 2023), <https://www.americanprogress.org/wp-content/uploads/sites/2/2023/06/MI-democracy-report.pdf>; see Mich. Comp. Laws Ann. § 168.509ii.

³³ 52 U.S.C. 20509.

³⁴ MOA Section II.

³⁵ 52 U.S.C. § 20506 (a)(3)(B)(ii).

³⁶ MOA Section III.

that voter registration is entirely nonpartisan. These requirements are explicitly set forth in Section X of the MOA (“Prohibited Agency Conduct”), and mandate that agency staff shall not:

- (A) seek to influence an applicant’s political preference;
- (B) display any such political preference or party allegiance;
- (C) make any statement to an applicant or take any action, the purpose or effect of which is to discourage the applicant from registering to vote; or
- (D) make any statement to an applicant or take any action, the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits.³⁷

These requirements add specific protections in addition to those in the Hatch Act, which prohibits partisan political activity on behalf of particular political candidates and parties and is separately binding on federal agency staff.³⁸ Indeed, federal military recruitment offices have been conducting non-partisan voter registration under the NVRA since its enactment in 1993.³⁹

VI. CONCLUSION

In recent years, following the Supreme Court’s evisceration of key protections against voting discrimination in its *Shelby County* decision,⁴⁰ voting rights for Black Americans have been increasingly undermined through voter suppression legislation enacted throughout the country. Too often, access to voter registration itself has been a barrier to participation in elections for eligible voters. Because of the NVRA, eligible voters can more easily access voter registration and fully participate in our democracy. LDF applauds all efforts to expand access to voter registration, including the efforts of the state of Michigan and the Small Business Administration to expand convenient voter registration opportunities to small businesses in Michigan, and other efforts fostered by President Biden’s Executive Order on Voting. LDF also calls on Congress to act urgently to enact robust voting rights legislation, including the John R. Lewis Voting Rights Advancement Act,⁴¹ to protect the right to register and vote.

³⁷ 52 U.S.C. § 20506(a)(5); MOA Section X (“Prohibited Agency Conduct”).

³⁸ See 5 U.S.C. §§ 7323, 7324.

³⁹ See Fed. Voter Assistance Program, Military Recruiting Activities, <https://www.fvap.gov/vao/recruiter> (describing requirements for providing assistance with voter registration in military recruitment offices).

⁴⁰ *Shelby Cnty. v. Holder*, 570 U.S. 529 (2013).

⁴¹ H.R. 4, 117th Cong. (2021), <https://www.congress.gov/bill/117th-congress/house-bill/4>.