

From: [Schultz, Mary Beth - OGC, Washington, DC](#)
To: [Grahn, David - OGC, Washington, DC](#)
Cc: [Hipp, Janie - OGC, Washington, DC](#)
Subject: EO vote letter
Date: Sunday, August 28, 2022 12:47:40 PM
Attachments: [image001.png](#)
[8829385 Incoming.pdf](#)
[8829385 Final Response 2022-08-11.docx](#) See final letter below.

Diamond and I worked on the EO voting letter. See draft at link below. Thanks.

(b)(5) Deliberative Process

House of Representatives

Washington, D.C. 20515

June 15, 2022

The Honorable Thomas J. Vilsack
Secretary
United States Department of Agriculture
1400 Independence Avenue SW
Washington, D.C. 20250

Dear Secretary Vilsack:

We write today to inquire about the Executive Order on Promoting Access to Voting, E.O. 14019, which President Joe Biden signed on March 7, 2021, and to share our concerns about the lack of constitutional and statutory authority for federal agencies to engage in any activity beyond its stated mission, including federal voting access and registration activities. We recently sent a letter of inquiry to the Directors of the Domestic Policy Council and the Office of Management and Budget and, to date, received no response.

We are certain you agree with us that every eligible voter who chooses to vote must have the opportunity to vote, and that every lawful vote must count, and increased voter registration and participation is a goal we share. Yet, our system requires that our actions must comport always with the Constitution and other federal law. According to Article I, section 4 of the Constitution, states have the primary role in establishing election law and administering elections.¹ And, to the extent the Elections Clause contains a federal “fail-safe,”² it is the Congress to whom the Constitution delegates that power, not the President. The President’s role is limited to enforcing enacted legislation passed by Congress; therefore, the President must exercise great restraint when attempting to act on election law.

We are concerned that this Executive Order goes beyond the power of the President and the statutory authority given to federal agencies, specifically (1) Directing federal agencies to assist states with voter registration if a state requests assistance; (2) Expanding the use of vote.gov and suggesting agencies add a link to it on their websites; and (3) Proposing ways to increase federally funded government employee participation in the voting process.

On March 23, 2022, the U.S. Department of Agriculture’s (USDA, Department) Food, Nutrition, and Consumer Services sent four letters to State agencies encouraging them to provide local program operators with promotional materials, including voter registration information. While the Supplemental Nutrition Assistance Program (SNAP) letter reiterates existing responsibilities under the National Voter Registration Act, we do question the Department’s direction that “the cost of providing voter registration services, including application processes and training for staff, are allowable SNAP administrative expenses and are reimbursed at the 50 percent level.” Using the nation’s multi-billion-dollar domestic nutrition program to implement the Biden Administration’s voter registration scheme is not only a cause for concern, but one that necessitates further scrutiny.

Of equal concern is the April 11 announcement of the Bipartisan Infrastructure Law *Rural Playbook*, whereas federal staff are being deployed to rural communities, many of which are expected to be battlegrounds in the upcoming midterm elections. Additionally, a second tranche of visits is being reported, including those in states considered top-tier Senate races.³ The Biden Administration’s new-found attention to rural America creates the appearance that official government actions are being driven by political considerations.

¹ Ranking Member Rodney Davis, *The Elections Clause: States’ Primary Constitutional Authority Over Elections*, Report, U.S. H. of Reps., Comm. on H. Admin. Republicans (Aug. 12, 2021), https://republicans-cha.house.gov/sites/republicans.cha.house.gov/files/documents/Report_The%20Elections%20Clause_States%20Primary%20Constitutional%20Authority%20over%20Elections%2028Aug%2011%202021%29.pdf.

² Even Congress’ role in this space is secondary, and Congress must restrain itself from acting improperly and unconstitutionally.

³ Alemany, Jacqueline and Meyer, Theodor. (2022, April 20). *Democrats look for ways to win back rural voters*. Retrieved April 20, 2022, from <https://www.washingtonpost.com/politics/2022/04/20/democrats-look-ways-win-back-rural-voters/>

We request you respond in writing to the following questions:

1. Has USDA submitted a plan in response to the Executive Order? If yes, has the agency made any updates to the plan originally submitted? If so, what changes have been made? Please provide copies of the plan submitted, including any and all changes.
2. What statutory authorities enable USDA to engage in voter registration and share election information? How does engaging in activities related to voter registration further the agency's mission?
3. Has USDA estimated the amount of funding it will require to implement these plans? If so, please send the estimate. Where will the funding come from?
4. The Executive Order directs agencies to consider soliciting and facilitating approved, third-party organizations and state officials to provide voter registration services on agency premises. What are the criteria for such approval, including the responsible parties or clearance process for such approval? Please provide a list of third-party entities that have been solicited and a list that have been approved, to date.
5. Which states, if any, have requested assistance for voter registration from USDA, and, specifically, what assistance have they requested?
6. Have proper steps been taken to ensure that the actions taken by USDA employees do not violate the Hatch Act? If so, please provide a detailed description of the steps taken.

We share the same goal of protecting every eligible citizen's right to vote and that every lawful vote must count. However, we must follow the paradigm as established by the Constitution. States have the primary role in establishing election law with Congress playing a secondary role. As the federal government, we must exercise caution to ensure the actions we take are constitutional.

We look forward to hearing from you. Rules of the House of Representatives give the Committee on Agriculture oversight of USDA and the Committee of House Administration oversight of federal elections. Please respond by July 11, 2022. Please send your response and any questions you may have Jennifer Tiller, Deputy Staff Director of the House Committee on Agriculture at jennifer.tiller@mail.house.gov and Caleb Hays, General Counsel and Deputy Staff Director, of the Committee on House Administration at Caleb.Hays@mail.house.gov.

Sincerely,



Rodney Davis
Ranking Member
Committee on House Administration



Glenn "GT" Thompson
Ranking Member
Committee on Agriculture



James Comer
Ranking Member
Committee on Oversight and Reform



Virginia Foxx
Ranking Member
Committee on Education and Labor



Andy Harris, M.D.
Ranking Member
Subcommittee on Agriculture Appropriations



Bryan Steil
Ranking Member
Subcommittee on Elections

Kat Cammack

Michael Cloud

Eric A. "Rick" Crawford

Michelle Fischbach

Vicky Hartzler

Doug LaMalfa

Barry Moore

David Rouzer

Dusty Johnson

Austin Scott

Randy Feenstra

Trent Kelly

Troy Balderson

Scott DesJarlais, M.D.

James R. Baird



Office of the Secretary
Washington, DC 20250

September 15, 2022

THE HONORABLE RODNEY DAVIS,
Ranking Member
Committee on House Administration
U.S. House of Representatives,
2079 Rayburn House Office Building
Washington, D.C. 20515

Dear Ranking Member Davis:

Thank you for your letter regarding President Biden's Executive Order (EO) on Promoting Access to Voting, E.O. 14019 and the actions of the United States Department of Agriculture (USDA) to implement the EO.

USDA is committed to enabling Americans to participate in our democracy by promoting the right to vote and non-partisan and non-campaign election information, among voting-age program participants and their families where authorized. The Food and Nutrition Service (FNS) is the Federal agency that administers the Supplemental Nutrition Assistance Program (SNAP) and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). In accordance with the National Voter Registration Act of 1993 (NVRA), P.L. 103-31, State SNAP and WIC agencies are required, unless exempted, to provide voter registration services.

The NVRA requires SNAP and WIC State agencies to offer voter registration opportunities to any person who applies for or renews an application for public assistance, which includes the acceptance of the completed voter registration form and transmittal to State election officials. Section 7(b) of the NVRA ((52 U.S.C. 20506(b)) requires that all Federal agencies "to the greatest extent practicable, cooperate with the States in carrying out" their responsibilities under the NVRA. In addition, Section 1(b) of Executive Order 12926, "Implementation of the National Voter Registration Act of 1993," (59 FR 47227, September 14, 1994) requires all Federal agencies to assist State agencies "with the costs of implementation of the [NVRA], consistent with legal authority and the availability of funds." FNS therefore has an obligation to assist States with the implementation of the NVRA, including Federal assistance with State NVRA costs, where practicable and consistent with legal authority.


As it currently stands, while the Department has moved forward with strategic planning called for by the Executive Order, the Department has not estimated the amount of funding needed to implement plans in response to it. USDA has not solicited or facilitated approved third-party organizations or State Officials to provide voter registration on USDA premises. FNS is not aware of any requested assistance from State agencies for voter registration from USDA. USDA is always vigilant about ensuring its employees comply with the Hatch Act and our ethics officers offer regular training on such matters.

THE HONORABLE RODNEY DAVIS

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I hope you find this information helpful. If you have any questions about this response, please have a member of your staff contact the Office of External and Governmental Affairs at (202) 720-7095.

Sincerely,

A handwritten signature in blue ink that reads "Thomas J. Vilsack". The signature is written in a cursive, flowing style.

THOMAS J. VILSACK
Secretary

From: [Kim, Mina - OGC, Washington, DC](#)
To: [Kochan, Gena - OGC, Washington, DC](#)
Subject: RE: 4/20/22 Work update
Date: Friday, April 22, 2022 11:43:00 AM

b(5) ACP

b(5) ACP

Mina Kim
Deputy Assistant General Counsel | Office of the General Counsel | USDA
International Affairs, Food Assistance & Farm and Rural Programs (FAIR) Division
1400 Independence Avenue, SW | Washington, DC 20250
(202) 720-6458 phone | (202) 720-0432 fax
mina.kim@usda.gov

From: Kochan, Gena - OGC, Washington, DC <gena.kochan@usda.gov>
Sent: Friday, April 22, 2022 10:47 AM
To: Kim, Mina - OGC, Washington, DC <mina.kim@usda.gov>
Subject: FW: 4/20/22 Work update

Will you edit one of these for submission?

From: Chan, Elizabeth - OGC, Washington, DC <Elizabeth.Chan@usda.gov>
Sent: Wednesday, April 20, 2022 11:26 AM
To: Kochan, Gena - OGC, Washington, DC <gena.kochan@usda.gov>; Kim, Mina - OGC, Washington, DC <mina.kim@usda.gov>; Sherman, Lori - OGC, Washington, DC <lori.sherman@usda.gov>

Subject: 4/20/22 Work update

Hi Gena-

b(5)ACP [Redacted]

b(5)ACP

New

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Completed

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Awaiting My Review

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Under Review

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Please let me know if you have any questions.
Thanks,
Elizabeth